TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 473.

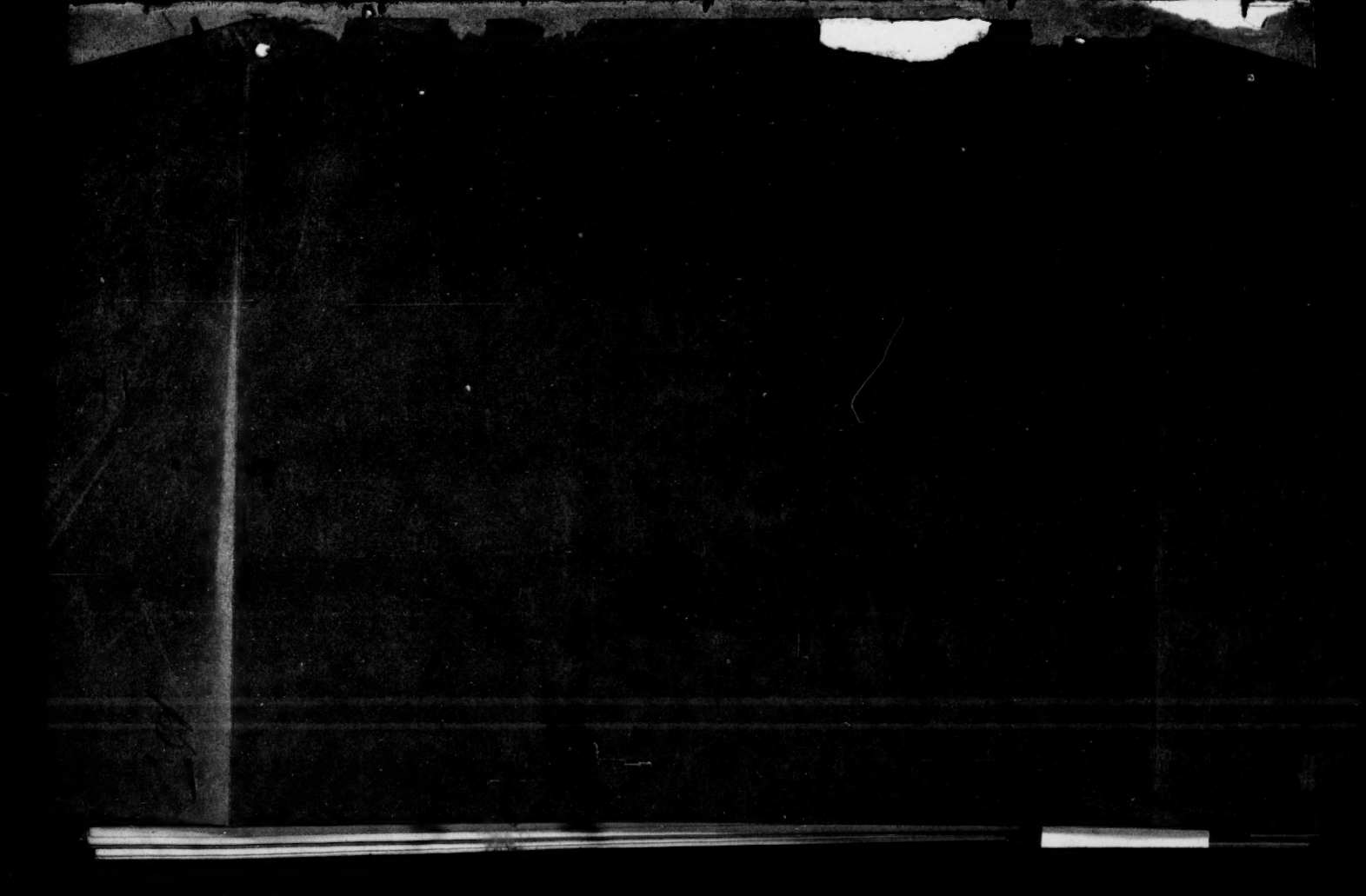
JOHN S. TOOF, CHARLES J. PHILLIPS, AND FRANK M. MAHAN, AS TOOF, PHILLIPS & CO., APPELLANTS,

vs.

RUFUS W. MARTIN, ASSIGNEE IN BANKRUPTCY OF W. P. HAINES & CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARKANSAS.

FILED AUGUST 5, 1870.



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1 Be it rem'bered that on the twenty-ninth day of March, A. D. 1870, came into the clerk's office of the circuit court of the United States for the eastern district of Arkansas, Garland and Nash, solicitors for Toof, Phillips & Co., and filed herein a transcript from the district court of this district, which is in the words and figures following, to wit:

(Indorsed:) Filed in U. S. circuit court March 29, 1870.
CHA'S P. REDMOND, *Clerk.*

RUFUS W. MARTIN, ASSIGNEE OF HAINES & Chetlain,
vs.
TOOF, PHILLIPS & CO.

Be it remembered that on the 16th day of November, A. D. 1868, before the clerk of the district court of the United States for the eastern district of Arkansas, in vacation, the following proceedings were had, to wit:

RUFUS W. MARTIN, ASSIGNEE OF HAINES & Chetlain,
vs.
TOOF, PHILLIPS & CO.

2 And now this day comes into the clerk's office said complainants, by Watkins and Rose, their solicitors, and file herein their bill of complaint in this matter, and eleven exhibits thereto; and, on motion of said solicitors, it is ordered that a writ of subpœna issue in this cause, returnable on the first Monday of January, 1869, and it is done accordingly.

Which bill of complaint is in the words and figures following, to wit:

In the United States district court for the eastern district of Arkansas.

RUFUS W. MARTIN, AS ASSIGNEE IN BANKruptcy of the assets of William P. Haines & Charles E. Chetlain, lately merchants and partners, doing business under the firm name of W. P. Haines & Co., pl'ff,
vs.
3 JOHN S. TOOF, CHARLES J. PHILLIPS, and Frank M. Mahan—merchants and partners, doing business under the firm name of Toof, Phillips & Co.—William P. Haines, and Charles E. Chetlain, def'ts. } Bill.

To the Hon. Henry C. Caldwell, judge of said court in chancery sitting:

Humbly complaining, would show unto your honor your orator, Rufus W. Martin, as assignee in bankruptcy of the assets of William P. Haines and Charles E. Chetlain, late merchants and partners doing business under the firm name of W. P. Haines & Co., residing in the county and district aforesaid, that heretofore, to wit, on the 22d day of May, 1868, the said Haines and Chetlain, partners as aforesaid, were adjudicated bankrupts on their own voluntary petition, before Elisha Baxter, a register in bankruptcy in this court. A copy of the certificate of said

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In the United States district court for the eastern district of Arkansas.

RUFUS W. MARTIN, AS ASSIGNEE IN BANKruptcy of the assets of William P. Haines & Charles E. Chetlain, lately merchants and partners, doing business under the firm name of W. P. Haines & Co., pl'ff,
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3 JOHN S. TOOF, CHARLES J. PHILLIPS, and Frank M. Mahan—merchants and partners, doing business under the firm name of Toof, Phillips & Co.—William P. Haines, and Charles E. Chetlain, def'ts. } Bill.

To the Hon. Henry C. Caldwell, judge of said court in chancery sitting:

Humbly complaining, would show unto your honor your orator, Rufus W. Martin, as assignee in bankruptcy of the assets of William P. Haines and Charles E. Chetlain, late merchants and partners doing business under the firm name of W. P. Haines & Co., residing in the county and district aforesaid, that heretofore, to wit, on the 22d day of May, 1868, the said Haines and Chetlain, partners as aforesaid, were adjudicated bankrupts on their own voluntary petition, before Elisha Baxter, a register in bankruptcy in this court. A copy of the certificate of said

4 adjudication is herewith filed, marked Exhibit A, and made part hereof.

That on the 7th day of July, 1868, the said Baxter, as register in bankruptcy, as aforesaid, made and executed unto your orator, according to the form of the statute in such case made and provided, who had been duly elected assignee of the estate of such bankrupts, his deed of assignment, conveying unto your orator, as such assignee, "all the estate, real and personal, of the said Haines and Chetlain, bankrupts, including all the property of whatever kind of which they were possessed, or in which they were interested, or entitled to have, on the 22d day of May, 1868, a true copy of which is herewith filed, marked Exhibit "B," and made part hereof.

That the said bankrupts returned, among other property in Schedule B, No. 1, accompanying their amended petition in bankruptcy, under the description of "all real estate owned by petitioners, or held
5 by them, whether under contract or lease," the following: "One undivided half interest in the following-described real estate, situated in the town of Augusta, to wit: Beginning at the N. E. corner of lot number one, (1,) in block No. nine, (9,) on the south side of Main street; thence running south, on the line dividing lots No. (11) eleven and twelve (12) of the same block, to the southeast corner of lot No. two, (2;) thence east twenty-five feet, on the line dividing lots No. (10) ten and eleven (11) in said block; thence due north one hundred (100) feet to Main street; thence west to the place of beginning, or, as described in the original survey of the city of Augusta, twenty-five feet off the west end of lots No. eleven (11) and twelve, (12,) including the store-house now occupied by said W. P. Haines & Co.," the same being stated to be "encumbered by conveyance to Toof, Phillips & Co., Memphis, Tennessee, by said W. P. Haines & Co.," accompanied with the further statement that "on the 18th day of January, 1868, W. P.
6 Haines & Company, as owners of one undivided half interest in said described lots, sold and conveyed the same to Toof, Phillips & Co., of Memphis, Tennessee, for the sum of $1,876 84, said amount to be placed to the credit of said W. P. Haines & Co., who were then indebted to said Toof, Phillips & Co. Said sale was made in good faith, and was part of a general transaction and contract entered into by the said parties, by which said petitioners were to secure further credit with said house of Toof, Phillips & Co. In same transaction said petitioners assigned their title bond to lots described in their original schedule, and claimed as homestead upon conditions therein set forth. Said Toof, Phillips & Co. failing to give said title bond, as agreed upon and stated in original petition and schedule, petitioners deem it but just to all parties concerned to make their statement, that the assignee may be apprised of the condition of said property, and that petitioners' rights
7 may not be prejudiced, and that justice may be done." A copy of which amended schedule, filed in this court on the 15th day of May, 1868, is hereto annexed, marked Exhibit C, and made part hereof.

That previous to the time of making and filing said amended schedule, on the 18th day of January, 1868, the said W. P. Haines & Co. made and executed what purported to be a conveyance in fee of the said property to the said Toof, Phillips & Co., a firm composed of John S. Toof, Charles J. Phillips, and Frank M. Mahan, and doing a mercantile business under that name, in Memphis, Tennessee, which was ostensibly made on the consideration of eighteen hundred and seventy-six $\frac{84}{100}$ dollars, purporting to be in hand paid. A copy of the said deed of conveyance is herewith filed, marked Exhibit D, and made part hereof.

Your orator charges that the original of said deed is in the pos-
8 session and under the control of said Toof, Phillips & Co., and he prays that they may be required to produce the same here, in court, on the hearing of this cause.

Your orator would further show that, at the time of filing the original petition and schedule in bankruptcy, the said William P. Haines returned, among other property, one-half undivided interest in lots No. one, two, and three, in block twenty-five, in the city of Augusta, in Woodruff County, State of Arkansas, together with all buildings thereupon, and appurtenances, with a statement that the same was incumbered with vendor's lien for balance purchase money, and the further explanation that "said lots were purchased by petitioner and one Charles E. Chetlain, jointly of Ward Boyd, who gave to said vendees a bond for title to be made by him upon the event of their paying to him the full balance of purchase money, to wit, $700. Said bond was afterwards, to wit, on or about the 20th day of January, 1868, as-
9 signed by said petitioner, with said Chetlain, each transferring his right thereto, to one Frank Mahan, of the firm of Toof, Phillips & Co., of Memphis, Tennessee, in consideration of a draft drawn by said petitioner in favor of Frank Mahan, on the name of said Toof, Phillips & Co., for the sum of $3,034 54; which said amount of draft was to be applied to the payment of certain debts due said Toof, Phillips & Co., and further to secure continued credit with said Toof, Phillips & Co., said Frank Mahan, before the assignment of said bond, promised and agreed to give to said petitioners and said Charles E. Chetlain a bond to the effect that he would make to them severally or jointly a title by deed of conveyance to him or them of said lots, if he or they would pay to him, at any time within five years from that time, the said sum of $3,034 00 each. Said Mahan having failed to fulfil said contract on his part, the petitioner claims said lots as homestead." A copy of which schedule (B No. 1) is herewith filed, marked Exhibit E, and made part hereof.

10 Your orator would further show that the corresponding schedule, filed in this court at the same time, February 29th, 1868, by the said Charles E. Chetlain, contained a description of his one undivided half interest in the same property, and stated that the same was incumbered by a vendor's lien to secure balance purchase money, with this further statement, nearly identical with the statement made in the said schedule of said Haines, to wit, "said lots were originally purchased jointly by petitioner and one W. P. Haines, of Ward Boyd, who gave to said vendees a bond for title to be made when the said vendee should pay to said Ward Boyd the full balance of purchase money, to wit, seven hundred dollars. Afterwards, to wit, on or about the 20th day of January, 1868, said petitioner, together with said W. P. Haines, transferred said title bond to one Frank Mahan, of the firm of Toof, Phillips & Co., of Memphis, Tennessee, in consideration of a draft drawn by said peti-
11 tioner in favor of said Frank Mahan on the house of said Toof, Phillips & Co., for the sum of $3,034 56, which said amount of draft was to be applied to payment of debts due from petitioner and said Haines to secure further credit with said house of Toof, Phillips & Co., said Mahan agreeing to give to said petitioner a bond to the effect that he, Mahan, would make said petitioner a deed to said lots upon the condition that said petitioner should pay to him the said sum of $3,030 54 at any time during the next five years. Said Mahan agreed to give said bond at once, but failing, said petititioner claims that said contract with said Mahan is void, and claims a homestead upon said lot and houses

thereon." A copy of which schedule (B, No. 1) is herewith filed, marked Exhibit F, and made part hereof.

Your orator would further show that the said last-named prop-
12 erty had been purchased by said Ward Boyd of one Thomas Hough, on the 22d day of June, 1866, the same being then unimproved, for the sum of four hundred dollars, payable one day after date, but not actually paid, and that the said Hough gave to the said Boyd his title bond of that date, with the usual covenants to make title upon payment of the purchase money. A copy of the said bond for title, with all endorsements made thereon, is herewith filed, marked Exhibit G, and made part hereof, the original being held by your orator subject to the order of your honor, and the inspection of your honor at all times.

That the said W. P. Haines & Co., after their purchase of the said last-named property, made such improvement on the same as greatly enhanced its value.

That the amount which said W. P. Haines & Co. owed said Ward Boyd was about sufficient to release the land from the vendor's
13 lien held by said Hough as aforesaid.

That at the time of these several transactions, the said W. P. Haines & Co. owed a large amount of debts, among others a large debt to said Toof, Phillips & Co., who perceived that the said W. P. Haines & Co. were insolvent, and became anxious to secure the full payment of their debt, or as near a full payment as their property would extend to make, without any reference to the fate of the other creditors of said W. P. Haines & Co., and that the said William P. Haines & Co., consenting to this arrangement, induced Thomas Hough aforesaid to convey unto Frank M. Mahan, a member of the said firm of Toof, Phillips & Co., and really for the benefit of Toof, Phillips & Co., the property last above described for the nominal sum of seven hundred dollars, which amount your orator supposes was paid to said Hough by said firm of Toof, Phillips & Co. in order to relieve said property of the vendor's lien held by said Hough.

14 That in further payment for said last-named property, the said Mahan drew his two drafts on Toof, Phillips & Co. in favor of said Haines & Chetlain, as stated by them in their said schedule, and which drafts were placed by said Toof, Phillips & Co. to the credit of the said W. P. Haines & Co. on their books, and in discharge of so much of the indebtedness of said W. P. Haines & Co. to them as they amounted *as they amounted* to, and that in virtue of these pretended purchases did the said Toof, Phillips & Co., or the said Mahan, pay to W. P. Haines & Co. a single cent of money, but both the sales were merely intended to pay the debts due from W. P. Haines & Co. to the said Toof, Phillips & Co., in preference over others of their creditors, and that the drawing of said drafts and the making the deed to said Mahan, instead of to his firm, were only intended to make the transactions more obscure and difficult to trace out to their proper consequences.

Your orator herewith files a copy of the said deed from Thomas
15 Hough unto said Frank M. Mahan, marked Exhibit H, and made part hereof, and the original being in the possession of the said Mahan, he prays that he may be required to produce the original thereof here in court on the final hearing of this cause.

Your orator would further show that, notwithstanding the said claims of homestead preferred by the said bankrupts in respect of the said property, the said claim was abandoned by both of said bankrupts, and was disallowed, as will be seen by reference to the copies of their

certificates of exempted property, herewith filed, marked Exhibits I and J, and made part hereof.

And your orator, as such assignee, says that on the 4th day of June, 1867, the said W. P. Haines & Co. made and executed unto said Toof, Phillips & Co. a certain conveyance, which recited a debt due from the former to the latter of three thousand nine hundred and ninety-two 72-100 dollars, evidenced by note due one day after said date,
16 and declared that the said conveyance was intended to secure payment of this, and the value of all supplies to be furnished the former by the latter firm not to exceed twenty thousand dollars, and which purported to convey to said J. M. McCurdy and Frank M. Mahan, in trust for Toof, Phillips & Co., all the crop of cotton then growing on the farm then cultivated by said W. P. Haines & Co., in Woodruff County, Arkansas, known as the Woolley farm; also nine mules, six yoke oxen, and one wagon; and they bound themselves thereby to ship to Toof, Phillips & Co. all the said crop of cotton as soon as practicable after the same should be picked, ginned, and baled; and the said Mahan was to reserve out of the proceeds an amount sufficient to satisfy the said trust, and pay over to said W. P. Haines & Co. the residue, who also bound themselves to ship to the said Toof, Phillips & Co. all cotton which they could control during the year 1867 as soon as practicable after the same should come into their
17 hands; and it was further provided that if the said indebtedness should not be paid by January 1st, 1868, then the said trustees, or either of them, should have authority to sell all or any part of the property therein contained to pay the debt, at public auction, on thirty days' notice of the time, place, and terms of sale. A copy of the said conveyance is herewith filed, marked Exhibit K, and made part hereof, and the original, being in the possession of the said Frank M. Mahan, your orator prays that he may be required to produce the same here in court on the final hearing of this cause.

Your orator further shows that under the said last-named conveyance the said Toof, Phillips & Co. eventually possessed themselves of the stock and personalty therein specifically mentioned and set forth, and also of a large quantity of cotton of the value of about twenty thousand dollars, and sold the same, and have never accounted for the pro-
18 ceeds of the same, or any part thereof, unto the said W. P. Haines & Co., nor unto your orator as such assignee, but the same they still continue to hold, possess, and enjoy. And your orator cannot tell the exact amount and value of the same, he will purge the conscience of the Toof, Phillips & Co. in that respect. Your orator alleged that the said last-named property, and all other property hereinbefore mentioned, came into the hands and possession of the said Toof, Phillips & Co. within four months before the filing of the said petition in bankruptcy of said W. P. Haines & Co.; that at the time of making said conveyances, and at the time of the receiving of said property, the said W. P. Haines & Co. were insolvent, or at least in contemplation of insolvency, and that the said conveyances and transfers were made by the said W. P. Haines & Co. with a view to give a preference to the said Toof,
19 Phillips & Co., who were then their creditors, having claims against them, and that it was the object of the said conveyances fraudulently to evade the operation of the provisions of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; which fraud was participated in by the said Toof, Phillips & Co. no less than by the said W. P. Haines & Co.; and that at the time of receiving the said

conveyances and the transfers aforesaid, and the benefits arising therefrom, the said Toof, Phillips & Co. did know, or at least have reasonable cause to believe, that the said W. P. Haines & Co. were insolvent, and that the conveyances and transfers were made in fraud of the provisions of said act of Congress.

And he further says that said conveyances and transfers were not made in the usual and ordinary course of business of the said
20 bankrupts, and that when the same were made the said Toof, Phillips & Co. had reasonable cause to believe them to be insolvent, or to be acting in contemplation of insolvency; and that such conveyances and transfers were made with a view to prevent their property from coming to their assignee in bankruptcy, or to prevent the same from being distributed under the said act, or to defeat the object of, or in some way to hinder, impede, or delay the operation and effect of, or to evade some of the provisions of, the said act.

The premises being seen, your orator prays that the defendants may answer all and singular the several matters herein contained as fully, under their several oaths, as if the same were here repeated and they thereunto particularly interrogated; and especially that they may answer the following interrogatories:

1. At the time of making of the said transfers was not the indebt-
21 edness of W. P. Haines & Co. known to be greater than their immediate ability to pay?

2. What was the amount of their indebtedness?

3. What was the actual cash value of their assets?

4. If they were supposed to be solvent, why were these several conveyances made?

5. What was the consideration of these several conveyances, and to whom was the same paid, and how?

6. At the time of the conveyances of the land from W. P. Haines & Co. to Frank M. Mahan, what was the amount of the indebtedness of W. P. Haines & Co. to Toof, Phillips & Co.?

7. Was Frank M. Mahan then a partner of the firm of Toof, Phillips & Co., and was he acting for said firm?

8. What was the amount of the drafts drawn on Toof, Phillips & Co., in payment for the lands conveyed by and from W. P. Haines & Co. and by Thomas Hough, and how were those drafts paid, if ever?

22 9. After the conveyances aforesaid and transfers aforesaid, what was the state of accounts between W. P. Haines & Co. and Toof, Phillips & Co.?

10. How much was paid by Toof, Phillips & Co. to Thomas Hough, or his agent, in order to get a deed from him, and how was that matter settled in the accounts between them and W. P. Haines & Co.?

11. State fully all the facts connected with these entire transactions, and state all you know and every particular thereof.

Your orator prays that all the said conveyances may be declared and decreed to be null and void; that the said Toof, Phillips & Co. and said Mahan may be required to refund any sums of money by them unjustly received by virtue of the said conveyances, either by rents or hiring any of the property, or sale of the same, and that the said conveyances may be delivered up and cancelled; and that the defendants herein
23 may be enjoined from setting up any claim to the said property; and that your honor will cause the same to be returned unto your orator as such assignee; and that your honor will appoint a receiver to take charge of the said property during the pendency of this suit; and that your orator, as such assignee, may have such other and further

relief as the equity of his case may entitle him to and to your honor shall seem meet.

And that your honor will grant writ or writs of subpœna unto the said William P. Haines, Charles E. Chetlain, and John S. Toof, Charles J. Phillips, and Frank M. Mahan, merchants and partners doing business under the firm name of Toof, Phillips & Co., commanding them to appear in this honorable court to answer this bill of complaint, and to stand to, abide, and perform all such orders, directions, and decrees herein as the court shall give and make.

And your orator will ever pray, &c.

WATKINS & ROSE.

NOTE.—All the defendants are required to answer the foregoing
24 interrogatories, from No. 1 to No. 11, inclusive.

WATKINS & ROSE.

Filed and subpœna issued Nov. 16, 1868.

CHA'S P. REDMOND, *Clerk.*

And which Exhibits A, B, C, D, E, F, G, H. I, J, K, L are severally in the words and figures following, to wit:

EXHIBIT A.

Adjudication of bankruptcy on debtors' petition.

In the district court of the United States for the eastern district of Arkansas.

IN THE MATTER OF WILLIAM P. HAINES AND Charles E. Chetlain, by whom a petition for adjudication of bankruptcy was filed on the day of , A. D. 18 . } In bankruptcy.

25 At Batesville, in said district, on the 22d day of May, A. D. 1868, before Elisha Baxter, one of the registers of said court in bankruptcy.

EASTERN DISTRICT OF ARKANSAS, *ss:*

I, the undersigned, a register of said court in bankruptcy, upon good proof before me taken, do find that the said W'm P. Haines and Charles E. Chetlain have become bankrupts within the true intent and meaning of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, and I do hereby declare and adjudge him a bankrupt.

Witness Elisha Baxter, at Batesville, in said district, on the 22d day of May, A. D. 1868.

ELISHA BAXTER,
Register in Bankruptcy.

Entered this 29th day of May, 1868.

CHA'S P. REDMOND,
Clerk of said Dist. Ct. U. S.

26 Filed Nov. 16, 1868.

CHA'S P. REDMOND, *Clerk.*

EXHIBIT B.

27 *Assignment of bankrupt's effects.*

In the district court of the United States for the eastern district of Arkansas.

IN THE MATTER OF HAINES & CHETLAIN, bankrupt. } In bankruptcy.

EASTERN DISTRICT OF ARKANSAS, *ss:*

Know all men by these presents that Rufus W. Martin, of , in the county of Woodruff and State of Arkansas, has been duly appointed assignee of the estate of Haines and Chetlain, of Augusta, in the county of Woodruff and State of Arkansas, who has been adjudged bankrupt by decree of this court. Now, therefore, I, Elisha Baxter, register in bankruptcy in said district, by virtue of the authority vested in me by the fourteenth section of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said Rufus W. Martin, assignee as aforesaid, all the estate, real and personal, of the said Haines and Chetlain, bankrupt, including all property of whatever kind of which he is possessed, or in which he was interested, or entitled to have, on the 22d day of May, A. D. one thousand eight hundred and sixty-eight, together with all his deeds, books, and papers relating thereto, saving and excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section of said act, to have and to hold all the foregoing premises to the said Rufus W. Martin and to his heirs forever; in trust, nevertheless, for the use and purposes and with the powers and subject to the conditions and limitations prescribed and set forth in said act.

In witness whereof I, Elisha Baxter, register in bankruptcy in said district, have hereunto set my hand and caused the seal of said district court to be affixed this seventh day of July, anno Domini one thousand eight hundred and sixty-eight.

[L. S. OF THE COURT.] ELISHA BAXTER,
Register in Bankruptcy.

28 Filed this 11th day of July, A. D. 1868.
CHA'S P. REDMOND,
Clerk of Dist. C't.

Filed Nov. 16, 1868.
CHA'S P. REDMOND, *Clerk.*

29 EXHIBIT C.

Schedule B.—Inventory as approved.—Interest in lands.—In the matter of W. P. Haines & Charles E. Chetlain.

Particular description of all real estate owned by petitioners or held by them, whether under contract or lease.	Encumbrances thereon, if any, and date thereof.	Statement of all particulars relating thereto.	Estimated value. Dols.	Cts.
Undivided one-half interest in the following described real estate situated in the town of Augusta, to wit: Beginning at the N. E. corner of lot number one, (1,) in block No. nine, (9,) on the south side of Main street; thence running south, on the line dividing lots No. eleven (11) and twelve (12) of the same block, to the southeast corner of lot No. two, (2;) thence east twenty-five (25) feet on the line dividing lots No. ten (10) and eleven (11) in said block; thence due north one hundred (100) feet to Main street; thence west to the place of beginning, or, as described on the original survey of the city of Augusta, twenty-five (25) feet off the west end of lots No. eleven (11) and twelve, (12,) including the storehouse now occupied by said W. P. Haines & Co.	Said real estate encumbered by conveyance to Toof, Phillips & Co., Memphis, Tennessee, by said W. P. Haines & Co.	On the 18th day of January, 1868, the W. P. Haines & Company, as owners of one undivided half interest in said described lots, sold and conveyed the same to Toof, Phillips & Co., of Memphis, Tennessee, for the sum of $1,876,84, said amount to be placed to the credit of said W. P. Haines & Co., who were then indebted to said Toof, Phillips & Co. Said sale was made in good faith and was part of general transaction and contract entered into by the said parties by which said petitioners were to secure for their credit with said house, Toof, Phillips & Co. In same transaction said petitioners assigned their title bond to lots described in their original schedules, and claimed as homestead upon conditions therein set forth, said Toof, Phillips & Co. failing to give said title bond as agreed upon and stated in original petition & schedules. Petitioners deem it but just to all parties concerned to make this statement that the assignee may be apprised of the condition of said property, & that petitioners' right may not be prejudiced & that justice may be done.	1,876	84

W. P. HAINES, *Petitioner.*
C. E. CHETLAIN, *Petitioner.*

Filed May 15, 1868.

CHA'S P. REDMOND, *Clerk.*

A true copy of the amended Schedule B on file at this office.

CHA'S P. REDMOND, *Clerk.*

Filed Nov. 16, 1868.

CHA'S P. REDMOND, *Clerk.*

30 EXHIBIT D.

A transcript of a deed of conveyance executed by William P. Haines & Co. to and in favor of Toof, Phillips & Co.

This deed of conveyance, made and entered into this 18th day of January, A. D. 1868, by and between William P. Haines and Charles E. Chetlain, by the firm name and style of W. P. Haines & Co., of the city of Augusta, of the first part, and Toof, Phillips & Co., of the city of Memphis, Tenn., of the second part, witnesseth that the parties of the first part have this day, for and in consideration of the sum of eighteen hundred seventy-six $\frac{84}{100}$ dollars to them in hand paid by the parties of the second part, the receipt of which is hereby acknowledged, bargained and sold, and by these presents do bargain and sell, to the parties of the second part, their undivided one-half interest in the
31 following-described lot of ground, with the tenements thereon, lying and being situate in the city of Augusta, in Woodruff County, Arkansas, viz: Beginning at the northeast corner of lot numbered one,

(1,) in block No. nine, (9,) on the south side of Main street; thence running south on the line dividing lots one (1) and two (2) of said block, from lots numbered eleven (11) and twelve (12) of the same block to the southeast corner of lot number two, (2;) thence running due east twenty-five (25) feet on the line dividing lots numbered ten (10) and eleven in said block; thence running due north one hundred (100) feet to Main street; thence due west to the place of beginning, or, as described on the original survey of the city of Augusta, twenty-five (25) feet off the west ends of lots numbered eleven (11) and twelve, (12,) in said block No. nine, (9,) including the storehouse now occupied by W. P. Haines & Co.,
to have and to hold the aforesaid granted premises to the parties
32 of the second, their heirs and assigns, forever. And the parties of the first part hereby covenant to defend the title to the aforesaid granted interest in said lot of ground, with the privileges and appurtenances thereto belonging, to the parties of the second part, their heirs and assigns, against the lawful claims of all persons whomsoever.

Witnesseth the firm signature of the aforesaid parties of the first part, this day and year above written.

Interlined before signed.

W. P. HAINES & CO.

[$2 00 U. S. stamp.]

STATE OF ARKANSAS, *County of Woodruff:*

This day personally appeared before me, W'm P. Campbell, clerk of the circuit court of and for said county of Woodruff, William P. Haines and Charles E. Chetlain, members of the firm of W. P. Haines & Co.,
whose firm name is subscribed to the foregoing deed of convey-
33 ance as parties grantor, and they acknowledge to me that they had executed and delivered the foregoing deed for the consideration and purposes therein set forth, and I do so certify.

Witness my official signature, and the seal of said court, at office, this 18th day of January, 1868.

[L. S.] W. P. CAMPBELL, *Clerk.*

The foregoing deed of conveyance was filed in my office for record on the 18th day of January, 1868, and duly recorded on the same day filed.

W. P. CAMPBELL,
Clerk and Ex-officio Recorder.
By F. G. BOYD, *D. C.*

STATE OF ARKANSAS, *County of Woodruff, ss:*

I, D. H. Johnson, clerk in and for said county, do certify that the pages of this instrument marked Nos. 1, 2, and three (3) contain a true
34 and perfect transcript of a deed of conveyance executed by W. P. Hanes & Co.; which said deed is on record in my office, in book B, pages 147 and 148.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, at my office in the city of Augusta, Ark., on this 31st day of October, A. D. 1868.

[L. S.] D. H. JOHNSON, *Clerk.*

Filed Dec. 3, 1868, at 12 m.

CHA'S P. REDMOND, *Clerk.*

35 EXHIBIT E.

Schedule B.—Inventory.—In the matter of William P. Haines, bankrupt.—Interest in lands.

Particular description of all real estate owned by petitioner or held by him, & whether under contract or lease.	Incumbrance thereon, if any, & date thereof.	Statement of all particulars relating thereto.	Estimated value. Dols.	Cts.
Half undivided interest in lots No. one, (1,) two, (2,) & (3,) three, in block twenty-five, (25,) in the city of Augusta, in Woodruff County, State of Arkansas, together with all buildings thereupon, and appurtenances.	Vendor's lien for balance of purchase money.	Said lots were purchased by petitioner & one Charles E. Chetlain, jointly, of Ward Boyd, who gave said vendees a bond for title, to be made by him upon the event of their paying to him the full balance of purchase money, to wit, $700 00. Said bond was afterwards, to wit, on or about the 20th day of January, 1868, assigned by said petitioner, together with said Chetlain, each transferring his right thereto, to one Frank Mahan, of the firm of Toof, Phillips & Co., of Memphis, Tennessee, in consideration of a draft drawn by said petitioner in favor of said Frank Mahan, on the name of said Toof, Phillips & Co., for the sum of $3,034 54, which said amount of draft was to be applied to the payment of certain debts due said Toof, Phillips & Co., and further to secure continued credit with said Toof, Phillips & Co. Said Frank Mahan, before the assignment of said bond, promised and agreed to give to said petitioner & said Charles E. Chetlain, a bond to the effect that he would make to them severally or jointly a title, by deed of conveyance, to him or them of said lots, if he or they would pay to him at any time within five years from that time the said sum of $3,034 00 each; said Mahan having failed to fulfil said contract on his part, petitioner claims the said lots as homestead.	4,000	00
West half of southeast quarter and east half of southwest quarter of section (13) thirteen, in township eighty-one (81) north, of range sixteen (16) west, one hundred and sixty acres, more or less, in County Poweshick, Iowa.	No encumbrance.	Said lands are held under title to Mrs. Mary E. Haines, wife to said petitioner, from J. B. Dent.		

W. P. HAINES, *Petitioner.*

Filed 29th February, A. D. 1868, at 5 p. m.

CHA'S P. REDMOND, *Clerk.*

A true copy of Schedule B on file in this office.

CHA'S P. REDMOND, *Clerk.*

Filed Nov. 16th, 1868.

CHA'S P. REDMOND, *Clerk.*

36 EXHIBIT F.

Schedule B[1].—Inventory as approved.—In the matter of Charles E. Chetlain, b'k't.—Interest in lands.

Particular description of all real estate owned by petitioner or held by him, and whether under contract or lease.	Encumbrance thereon, if any, and dates thereof.	Statement of all particulars relating thereto.	Estimated value. Dols.	Cts.
Undivided half interest in lots one, (1,) two, (2,) and three, (3,) in block twenty-five, (25,) in the city of Augusta, county of Woodruff, and State of Arkansas, together with all buildings upon said lots and all appurtenances thereto belonging.	Vendor's lien, and to secure purchase money.	Said lots were originally purchased jointly by petitioner & one W. P. Haines of Ward Boyd, who gave to said vendees a bond for title, to be made when the said vendees should pay to said Ward Boyd the full balance of purchase money, to wit, seven hundred dollars. Afterward, to wit, on or about the 20th day of January, 1868, said petitioner, together with said W. P. Haines, transferred said title bond to one Frank Mahan, of the firm of Toof, Phillips & Co., of Memphis, Tennessee, in consideration of a draft drawn by said petitioner in favor of said Frank Mahan on the house of said Toof, Phillips & Co., for the sum of $3,034 56, which said amount of draft was to be applied to payment of debts due from petitioner & said Haines & Co. to secure further credit with said house of Toof, Phillips & Co., said Mahan agreeing to give to said petitioner a bond, to the effect that he (Mahan) would make said petitioner a deed to said lots upon the condition that said petitioner should pay to him the said sum of $3,030 54 at any time during the next five years. Said Mahan agreed to give said bond at once, but failing, said petitioner claims that said contract with said Mahan is void, and claims a homestead upon said lot and houses thereon.	4,000	00

C. E. CHETLAIN, *Petitioner.*

Filed in the office of the clerk of the district court, district of Arkansas, this 29th day of Feb'y A. D. 1868, at 5 o'clock p. m.

CHA'S P. REDMOND, *Clerk.*

A true copy of Schedule B[1] on file in this office.

Attest: .

CHA'S P. REDMOND, *Clerk.*

Filed Nov. 16, 1868.

CHA'S P. REDMOND, *Clerk.*

37 EXHIBIT G.

Know all men by these presents that I, Thomas Hough, am held firmly bound unto Ward Boyd in the penal sum of eight hundred ($800 00) dollars, for the payment of which, well and truly to be made, unto the said Ward Boyd, I bind myself, my heirs, executors, and administrators, firmly by these presents.

The condition of the above obligation is such that whereas the above-named Ward Boyd hath purchased from the above-bound Thomas Hough three (3) certain lots or parcels of ground, situate and being in the county of Woodruff, State of Arkansas, and described as follows, viz: Lots numbered one, (1,) two, (2,) and three, (3,) in block numbered twenty-five, in the town of Augusta, now laid off on the bank of White River, said lots fronting on Broadway and Front streets, and intersecting lot number four (4) on the east, and lot number fourteen (14) on the north in same block, all of which will more fully appear by refer-

38 ence to the plat of said town. For which lots or parcels of ground the said Ward Boyd agrees to pay four hundred ($400) dollars, for which sum he executes his note payable one day after date, bearing even date herewith.

Now, if the said Ward Boyd shall well and truly pay off and discharge this note, then I bind myself, my heirs, executors, and administrators, to make, execute, and deliver unto the said Ward Boyd a deed of general warranty to the above-described lots or parcels of ground, and in default thereof I bind myself, my heirs, executors, administrators, to pay to the said Ward Boyd for all his improvements, damages he may sustain thereby.

In testimony whereof I have hereunto set my hand and affixed my seal this the 22d day of June, 1866.

(Signed) THOMAS HOUGH. [SEAL.]

In presence of—
THO'S E. ERWIN.

[50 c't stamp.]

39 (Indorsed:) For value received I hereby assign all my right, title, and interest in and to the within bond to F. M. Mahan.

Witness my hand and seal this the 18th day of January, A. D. 1868.

(Signed) WARD BOYD. [SEAL.]

"NOTE."—The note for $400 mentioned in this title bond as still remaining unpaid against Ward Boyd has been fully discharged.

THO'S HOUGH,
P'r T. E. ERWIN.

Filed Nov. 16, 1868.

CHA'S P. REDMOND, *Clerk.*

EXHIBIT H.

A transcript of a deed of conveyance executed by Tho's Hough and Fannie, his wife, to and in favor of Frank M. Mahan.

This deed, made and executed this 5th day of February, A. D.
40 1868, between Thomas Hough and Fannie, his wife, of the county of Woodruff, and State of Arkansas, of the first part, and Frank M. Mahan, of the county of Shelby, and State of Tennessee, of the second part, witnesseth that the parties of the first part, for and in consideration of the sum of seven hundred ($700 00) dollars to them in hand paid, the receipt of which is hereby acknowledged, have this day granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, to him, the said Frank M. Mahan, his heirs and assigns, forever, the following lots in the town of Augusta, viz: Lots numbered one, (1,) two, (2,) and three, (3,) in block number twenty-five, (25,) said lots fronting on Broadway and Front streets, and intersecting lot number four (4) on the east, and lot number fourteen (14) on the north
41 in same block, all of will more fully appear by reference to the plat of said town.

To have and to hold the same, with all the hereditaments, privileges, or appurtenances thereunto belonging, or in any wise appertaining, to him, the said Frank M. Mahan, his heirs and assigns, forever; and the parties of the first part do hereby warrant and defend the right and title of the same to the said Frank M. Mahan, his heirs and assigns, forever, against the lawful claims or demands of all parties whomsoever.

In testimony whereof the parties of the first part have hereunto set their hands and affixed their seals this the date first above written.

THOMAS HOUGH. [SEAL.]
FANNIE HOUGH. [SEAL.]

[$1 00 U. S. stamp.]

SPRING RIDGE,
Hinds County, Mississippi, Feb'y 5, 1868.

42 To the magistrate before whom this acknowledgement of this deed, in favor of F. M. Mahan, is made:

This is to certify I have signed the same and wish my acknowledgment to the same certified *certified* to by you as though I were personally present.

FANNIE HOUGH.

STATE OF ARKANSAS, *County of Woodruff:*

Be it remembered that on this 26th day of February, A. D. 1868, before the undersigned, personally came Thomas Hough, grantor in the foregoing deed of conveyance, and acknowledged that he had executed the same for the uses, purposes, and considerations therein set forth, and desired the same certified, which is accordingly done.

Given under my hand and official seal, as an acting and duly commissioned clerk of the circuit court within and for the county and
43 State aforesaid, this the 26th day of February, A. D. 1868.

W. P. CAMPBELL, *Clerk.*

The foregoing and above instrument of writing was filed for record in my office on the 26th day of February, 1868, at 4 o'clock p. m., and was duly recorded on the 27th day of February, 1868.

W. P. CAMPBELL,
Clerk and Ex-officio Recorder.
By F. G. BOYD, *D. C.*

STATE OF ARKANSAS, *County of Woodruff, ss:*

I, D. H. Johnson, clerk in and for the county of Woodruff aforesaid, do certify that the three pages of this instrument marked and numbered one, two, and three contain a true and perfect transcript of a deed of conveyance from Thomas Hough and Fannie Hough to and in
44 favor of Frank M. Mahan, which deed of conveyance appears of record in my office in record of deeds in book marked B, and pages numbered thus, 220 and 221.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at my office in the city of Augusta, on this 2d day of November, A. D. 1868.

[L. S.] D. H. JOHNSON, *C. Clerk.*

Filed Nov. 16, 1868.

CHA'S P. REDMOND, *Clerk.*

EXHIBIT I.

Certificate of exempted property.

IN THE DISTRICT COURT OF THE U. S. FOR THE east dist. of Ark, in the matter of Charles E. Chetlain, of the firm of Haines & Chetlain, b'k'ts, at Batesville, in said district, this 18th day of September, A. D. 1868. } In b'k'tcy.

45 EASTERN DISTRICT OF ARKANSAS, *ss:*

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid, as his own property, under

the provisions of the 14th section of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867:

List of property.

	Particular description.	Value.
	Necessary household & kitchen furniture not exceeding $500 in value; other articles & necessaries; wearing apparel of b'k't & his family; equipments, if any, as a soldier; other property exempted by law of the United States; property exempted by State law:	
	Necessary household & kitchen furniture:	
	1 wardrobe, $10; 2 bureaus, $30; 1 com. table, $2	42 00
	2 sewing stands, 3; 1 wash stand, 4	7 00
	2 chamber sett, 5; 1 lounge, 10	15 00
	1 dining table, 3; 6 cain-seat chairs, 6	9 00
46	1 large chair, 3; 1 rock'g chair, 2	5 00
	2 looking glasses, 2 25; 2 carpets & rugs, 25	27 25
	2 lamps, 2; 1 table cover, 1 50	3 50
	2 shuck rugs, 50c.; 3 spittoons, 25; 2 vase, 1	2 25
	1 set curtains, 1; 1 sheet-iron stove, 5	6 00
	1 block, 3; 1 p'r steelyards, 1	4 00
	1 water, 50; 1 foot pan, 50	1 00
	1 sausage grinder, 1; 1 shovel & tongs, 1	2 00
	1 dining-room safe, 5; 1 p'r blankets, 4	9 00
	1 match safe, 50; 2 arm-chairs, 3	3 50
	1 wash tub, 50; 2 jugs, 1	1 50
	Other articles & necessaries:	
	1 silver watch, 10; 3 trunks, 12	22 00
	100 bush. corn, 60; 1 old buggy & harness, 50	110 00
	1 ladies' saddle, 8; 1 man's saddle & bridle, 10	18 00
	12 chickens, 3; 1 spade, 1	4 00
	1 wheelbarrow, 1; 4 plows, 8	9 00
	2 scrapers, 40; 3 sets plow gears, 4 50	8 50
	5 hoes, 2; 2 satchells, 2	4 00
	P'p'y ex. by State law:	
	1 horse, 50; 1 cow & calf, 20; 1 plow, 2; 1 ax, 1; 1 hoe, 50	73 50
	1 set plow gear, 2; 2 beds & bedding, 50	52 00
	Clothing & wearing apparel of family	175 00
	Small library & family pictures	25 00
	1 cook'g stove & furniture	15 00
	Kitchen furniture	20 00
	4 smoothing irons 2; 2 wash tubs, 1	3 00
	1 breakfast table, 6; 1 kitchen do., 3	9 00
	2 set com. chairs, 6; 1 child's chair, 1 50	7 50
	1 kitchen safe, 3; 2 sets queenware for table, 20	23 00
47	Provisions on hand & groceries, &c	30 00
	" 100 bush. corn	60 00

Given the day and date first aforesaid.

ELISHA BAXTER,
Register.

One hundred bushels of corn herein set apart was fed to scheduled property.

A true copy of the certificate of exempted property on file in this office.

Attest: [L. S.] CHA'S P. REDMOND, *Clerk.*

Received and filed this 21st day of Sept'r, A. D. 1868, at 12 m.

CHA'S P. REDMOND,
Clerk of said Dist. C't U. S.

Filed Nov. 16, 1868.

CHA'S P. REDMOND, *Clerk.*

EXHIBIT J.

48 *Certificate of exempted property.*

In the district court of the U. S. for the eastern dist. of Ark.

IN THE MATTER OF W. P. HAINES, OF THE FIRM of Haines & Chetlain, bankrupt, at Batesville, in said district, this 18th day of September, A. D. 1868. } In b'k'tcy.

EASTERN DISTRICT OF ARKANSAS, *ss:*

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid as his own property, under the provisions of the 14th section of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867:

List of property.

Particular description.	Value.
Necessary household & kitchen furniture not exceeding $500 in value; other articles & necessaries; wearing apparel 94 of b'k't & his family; equipments, if any, as soldier; other property exempted by the laws of the U. S.; property exempted by State laws:	
Necessary household & kitchen furniture:	
1 wardrobe, 10; 1 bureau, 10	20 00
1 dining table, 5; 1 stand, 1 50; 1 crib, 3	9 50
1 dining-room safe, 5; 1 set curtains, 3	8 00
1 arm chair, 3; 1 sheet-iron stove, 8	11 00
2 bedsteads, 10; 1 wash bowl & pitcher, 1 50	11 50
Other articles & necessaries:	
1 Masonic ring, 5; 1 lantern, 1	6 00
1 cow & calf, 20; 100 bush. corn, 60	80 00
2 old saddles & bridles, 10; 3 curry-combs & brushes, 3	13 00
1 old wagon, 50; 4 old plows, 8	58 00
2 old scrapers, 2; 4 hoes, 2; 1 set post office boxes, 50	54 00
1 valise, 3; 2 trunks, 8; 1 desk, 5; 2 U. S. sashes, 5	21 00

Property exempted by State laws:

1 horse, 50; 1 cow & calf, 20; 1 set plow gear, 2	72	00
1 hoe, 50; 1 plow, 2; 1 ox, 1; 2 beds & bedding, 50	53	50
2 set chairs, 6; 1 breakfast table, 5	11	00
2 w. brackets, 1; 1 tea kettle, 1	2	00
Provisions on hand, groceries, &c	25	00
50 Provisions, 100 bush. corn	60	00
Wearing apparel of family	150	00
Few books & family pictures	10	00
Kitchen ware	10	00
2 sets queensware for table use	25	00

Given the day and date first aforesaid.

ELISHA BAXTER,
Register.

One hundred bushels of corn herein set apart was fed to scheduled property.

A true copy of the certificate of exempted property on file in this office.

Attest:
[L. S.]

CHA'S P. REDMOND,
Clerk U. S. Dist. C't E. D. A.

Received and filed this 21st day of September, A. D. 1868, at 12 m.

CHA'S P. REDMOND,
Clerk of said Dist. Court U. S.

Filed Nov. 16, 1868.

CHA'S P. REDMOND, *Clerk.*

51 EXHIBIT K.

A transcript of a deed of conveyance executed by William P. Haines & Co. to and in favor of Toof, Phillips & Co.

For the purpose of securing to John S. Toof, Charles J. Phillips, and F. M. Mahan, partners trading under the firm name and style of Toof, Phillips & Co., three thousand nine hundred and ninety-two $\frac{72}{100}$ dollars, due one day after date hereof by note, and for the further purpose of securing to the said Toof, Phillips & Co. the payment for all supplies to be furnished to us by the said Toof, Phillips & Co. during the year 1867, in amount not to exceed ($20,000 00) twenty thousand dollars, but is also to secure any less amount, we, W. P. Haines and C. E. Chetlain, partners trading under the firm name and style of W. P. Haines & Co., both of Woodruff county, Arkansas, hereby convey to F. M. Mahan, of Memphis, Tenn., and J. M. McCurdy, of Woodruff County, Ar-
52 kansas, in trust the following property, to wit: all the crop of cotton now growing on the farm cultivated by us in Woodruff County, Arkansas, known as the Wooley farm; also, (9) nine mules, (6) work oxen, and one wagon; and we hereby bind ourselves to ship to the said Toof, Phillips & Co., at Memphis, Tenn., all the above-named crop of cotton, as soon as practicable after the same is picked, ginned, and baled, and when the said F. M. Mahan is to reserve out of the proceeds an amount sufficient to satisfy this trust, and pay over to us, or our order, the residue; and we also bind ourselves to ship to the said Toof, Phillips & Co. all cotton which we can control during the year 1867, as

soon as practicable after the same comes into our control, it being ginned and baled before shipment to the said Toof, Phillips & Co. And if the said indebtedness is not paid by the first day of January,
53 1868, then the said trustees, or either of them, are authorized to sell all or any part of the property herein conveyed, or a sufficient part thereof to pay the debt, upon giving thirty days' notice of the time, place, and terms of sale, the said sale to be at public outcry to the highest bidder for cash, and the notice thereof to be put in some newspaper published in Memphis for four consecutive weeks before said sale; and they are further authorized to execute deeds or bills of sale to the purchasers, to pay off the debt herein secured, with interest and expenses, and hold the remainder subject to our order. And if, at any time before the 1st day of January, 1868, it become necessary for the faithful discharge of this trust that the said trustees, or either of them, should take charge of and dispose of the above-named property, or any part thereof, they, or either of them, are authorized to
54 take charge of the same, and dispose of the same, in the manner and for the purpose above set forth.

Witness our hands and seals the 4th day of January, 1867.

The interlineation in the ninth and tenth lines from the top of this deed, and also the interlineation of "the debt" over the thirteenth line from the bottom of this deed, the said first interlineation being "in an amount not to exceed ($20,000) twenty thousand dollars, but is also to secure any less amount," were inserted before the signing of this deed.

W. P. HAINES. [SEAL.]
CHARLES E. CHETLAIN. [SEAL.]

[$20 00 revenue stamp.]

STATE OF ARKANSAS, *County of Woodruff, ss:*

Personally appeared before me, W. P. Campbell, clerk of the circuit court in and for the county and State aforesaid, W. P. Haines
55 and C. E. Chetlain, who are to me well known to be the persons whose names are subscribed to the foregoing conveyance as party grantors, and acknowledged to me that they executed and delivered the same for the considerations therein set forth, and I do so certify.

Witness my hand and the seal of said court this 21st day of June, A. D. 1867.

[L. S.]

W. P. CAMPBELL, *Clerk*,
By GEO. K. HIBLER, *D. C.*

The above and foregoing instrument of writing was filed in my office for record June 21st, 1867, and recorded same day.

W. P. CAMPBELL,
Clerk & Ex-officio Recorder,
By GEO. K. HIBLER, *D. C.*

STATE OF ARKANSAS, *County of Woodruff, ss:*

I, D. H. Johnson, clerk in and for the county of Woodruff afore-
56 said, do certify that the three pages of this instrument of writing marked page No. 1, 2, and 3 contain a true and perfect transcript of a deed of mortgage executed by W. P. Haines & Co. to and in favor of John S. Toof, Charles J. Phillips, and F. M. Mahan, which said deed of mortgage of record in my office in deed of mortgages, on pages 144, 145, and 146, book marked "A."

In testimony whereof I have hereunto set my hand and affixed the seal of said county at my office in the city of Augusta, on this 2d day of November, A. D. 1868.

[L. S.] D. H. JOHNSON, *C. Clerk.*

Filed Nov. 6, 1868.

CHA'S P. REDMOND, *Clerk.*

EXHIBIT L.

57 Know all men by these presents that I, Thomas Hough, am held and firmly bound unto Ward Boyd in the penal sum of eight hundred ($800) dollars, for the payment of which, well and truly to be made unto the said Ward Boyd, I bind myself, my heirs, executors, administrators, firmly by these presents.

The condition of the above obligation is such that, whereas the above named Ward Boyd hath purchased from the above bound Thomas Hough three (3) certain lots or parcels of ground situate and being in the county of Woodruff, State of Arkansas, and described as follows, viz: lots numbered one, (1,) two, (2,) and three, (3,) in block number twenty-five, (25,) in the town of Augusta, now laid off on the bank of White River, said lots fronting on Broadway and Front streets and intersecting lot number four (4) on the east and lot number fourteen (14) on the north in same block, all of which will more fully appear by reference to the

58 plat of said town; for which lots or parcels of ground the said Ward Boyd agrees to pay four hundred ($400) dollars, for which sum he executes his note payable one day after date, bearing even date herewith; now, if the said Ward Boyd shall well and truly pay off and discharge this note, then I bind myself, my heirs, executors, and administrators, to make, execute, and deliver unto the said Ward Boyd a deed of general warranty to the above described lots or parcels of ground; and in default thereof I bind myself, my heirs, executors, administrators, to pay to the said Ward Boyd, for all his improvements, damages he may sustain thereby.

In testimony whereof I have hereunto set my hand and affixed my seal this the 22d day of June, 1866.

THOMAS HOUGH. [SEAL.]

In presence of—

59 THOMAS E. ERWIN.

[Rev. st'p 50c. Thomas Hough, June 22, '66.]

For value received I hereby assign all my right, title, and interest in and to the within bond to F. M. Mahan.

Witness my hand and seal this the 18th day of January, A. D. 1868.

WARD BOYD. [SEAL.]

NOTE.—The note for $400 mentioned in this title bond as still remaining unpaid against Ward Boyd has been fully discharged.

THOS. HOUGH,
Per T. E. ERWIN.

Filed Nov. 16, 1868.

CHA'S P. REDMOND, *Clerk.*

On which bill a writ of subpœna ad respondendum was issued by the clerk in words and figures following, to wit:

60 UNITED STATES OF AMERICA,
Eastern district of Arkansas:

The President of the United States to John S. Toof, Charles J. Phillips, and Frank M. Mahan, partners under the name of Toof, Phillips & Co., and William P. Haines and Charles E. Chetlain, greeting:

We command and strictly enjoin upon you that, laying all other matters aside, and notwithstanding any excuse, you and each of you be and personally appear before the judge of our district court of the United States in and for the eastern district of Arkansas, in chancery sitting, on the fourth day of January, A. D. 1869, it being the first Monday of January next, wheresoever the said court shall then be, and there to answer a bill of complaint exhibited against you in our said court by Rufus W. Martin, as assignee in bankruptcy of the assets of William P. Haines and Charles E. Chetlain, late partners under the name of W. P. Haines & Co., and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit, under penalty of what the law directs.

In testimony whereof Hon. Henry C. Caldwell, justice of the district court of the United States, has caused the seal of said district court to be hereunto affixed this 16th day of Nov., A. D. 1868, and in the 93d year of our independence.

Attest:

CHA'S P. REDMOND, *Clerk.*

N. B.—The defendants are required to enter their appearance in the above cause in the clerk's office of this court, on or before the 4th day of January, 1869, or the bill will be taken pro confesso against them.

CHA'S P. REDMOND, *Clerk.*

61 Issued Nov. 16, 1868. Returnable Jan. 4, 1869. Returned and filed Nov. 24, 1868.

CHA'S P. REDMOND, *Clerk.*

62 On which writ of subpœna the marshal made return as follows, to wit:

I have served the within subpœna on the within named Toof, Phillips & Co., to their attorneys, Garland and Nash, at Little Rock, Ark., who acknowledge due and legal service of the same, as per endorsement hereon, in the eastern district of Arkansas, on this 26 day of November, A. D. 1868.

ISAAC C. MILLS,
$2 75. *U. S. Marshal for East. Dist. Ark.*

We acknowledge due and legal service of this subpœna this November 16th, A. D. 1868, to answer on return day, viz, 4th January, A. D. 1869.

TOOF, PHILLIPS & CO.,
By GARLAND AND NASH, *Att'ys.*

63 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a district court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 4th day of October, anno Domini one thousand eight hundred and sixty-nine, at the United States court-room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, judge, presiding and holding said court, the following proceedings were had, to wit:

And on the 4th day of January, A. D. 1869, it being yet a day of the October term aforesaid, the following further proceedings were had, to wit:

RUFUS W. MARTIN, ASSIGNEE OF W. P. HAINES & Co.,
vs.
TOOF, PHILLIPS & Co.

And now come said defendants, by Garland and Nash, their solicitors, and file herein their motion for ten days' further time in which to file their answer. And it is ordered that said motion be granted, and that ten days' further time be given to defendants in which to file their
64 answer.

Which motion is in the words and figures following, to wit:

In the U. S. circuit court. Rule day, Jan'y 4, 1869.

RUFUS MARTIN
vs.
TOOF, PHILLIPS & Co.

The defendants come and show, by their solicitors, that their joint and separate answer herein was prepared some ten days since, and was transmitted to them at Memphis, Tenn., to be sworn to, about the 22d Dec. last; but such answer has not as yet been returned to be filed here in court; but said defendants have, by telegraph, notified their solicitors that such answer had been forwarded by mail to their address, and the same would probably reach here by the mail due this day, (the 4th ins't.)

65 Wherefore they pray an extension of time to file their answer for ten days, at which time they hope and expect to be able to file their answer.

GARLAND & NASH,
Sol's for Def'ts.

Filed January 4, 1869.

CHA'S P. REDMOND, *Clerk.*

And afterwards, on the 6th day of January, 1869, it being yet a day of the October term aforesaid, the following further proceedings were had, to wit:

RUFUS W. MARTIN, ASSIGNEE,
vs.
TOOF, PHILLIPS & Co.
Chancery.

And now come said defendants, by Garland and Nash, their solicitors, and file herein their answer to the bill in this cause. And which
66 answer is in the words and figures following, to wit:

In the circuit court of the United States, district of Arkansas.

The answer of John S. Toof, Charles L. Phillips, and Frank Mahan, merchants, &c., under the style of Toof, Phillips & Co., and the separate answer of said Mahan to the bill of complaint filed herein against them and others, defendants, by Rufus W. Martin as assignee, &c., compl't.

Respondents saving and reserving to themselves all manner of benefit of exception to the errors, uncertainties, and insufficiencies in said bill contained, but nevertheless for answer thereto, or to so much thereof

as they are advised it is material or necessary for them to answer unto, answering thereto defendants say: It is true, as charged in said bill, that the said W. P. Haines & Co., composed as charged in said
67 bill, were adjudicated bankrupts at the time and place and in the manner alleged in said bill, and Exhibit A is a true copy of the certificate of said adjudication. They further admit the appointment of complainant as assignee of said Haines & Co., and the execution, by Elisha Baxter, of his deed of assignment, all as stated in said bill, and Ex. B to said bill is a true copy of said deed of assignment. It is true, as stated in said bill, that said bankrupts returned in schedule B, No. 1, the property named in said bill, and said property is fully and accurately described in said bill, and the statement in said bill contained as to said property purporting to have been made by said bankrupt in said schedule is correctly set forth in said bill, and Ex. C is a true and correct copy of said schedule and statement therein as it purports to be.

It is also true, as stated in and by said bill, that said W. P.
68 Haines & Co. did make and execute a deed to said Toof, Phillips & Co., composed as aforesaid, for the property named, but the same was not only made ostensibly on the consideration of eighteen hundred and seventy-six dollars and eighty-four cents, ($1,876 84,) as stated in said bill, but it was made on said consideration in fact, and on no other consideration. Ex. D to said bill is a true and correct copy of said deed, the original being in the possession of these defendants, subject to the inspection of parties to be produced on the hearing of this cause, or at any other time the court may order. It is true, as stated in the bill, that on the filing of the original petition in bankruptcy as aforesaid, the said W. P. Haines returned therewith one-half undivided interest in lots Nos. 1, 2, & 3 in block 25 in the city of Augusta, in Woodruff County, and the statement of said bill as to the vend-
69 or's lien on said lots, and the claim of homestead thereto by said Haines, are correctly made, as appears by said schedule B, No. 1, and Ex. E to said bill, is a true and correct copy, but the facts as stated therein in relation to said lots were and are untrue in all respects, as said lots were then, on the filing of said schedule, the property absolutely of resp't, Frank M. Mahan, and said lots should not have been included or mentioned in said schedule for any purpose, and the same should now be stricken therefrom and released to said Mahan; and these defendants also aver that said bankrupts improperly made mention of or returned in said schedule B, No. 1, the lots or parcels of lots sold by them to said Toof, Phillips & Co., as the same were then and are now the property of said Toof, Phillips & Co., and the same should be stricken from said schedule and released to defendants, Toof,
70 Phillips & Co.; and these defendants admit that said bill correctly states the facts as to the return made by said Chetlain as to the property aforesaid, as taken from the schedule with the petition in bankruptcy, and that Ex. F to said bill is a true and correct copy of said schedule in so far as it purports to be, but the facts contained in said schedule are untrue as hereinbefore stated, with reference to a like return of said Haines, and the said Chetlain should not have mentioned said property at all in his schedule, as the same was then and is now the property of respondent, Mahan, and should be stricken from said schedule and released to him. It is also true, as stated in said bill, that Ward Boyd bought of one Tho's Hough, on 22d June, 1866, the property named in said bill, and for the consideration of (400) four hundred dollars, as charged, and the execution of the title bonds as stated
71 in and by said bill, and that Ex. G to said bill is a true copy

thereof; and they deny that said Haines & Co. did improve said property. The truth is that W. P. Haines improved one-half as his own, and with his own means, and C. E. Chetlain did likewise as to the other half; but to what extent they so improved, except from the amount that said Mahan paid for said improvements, and that was $3,034 54 to each of said parties by draft to each. Defendants knew nothing at all of any indebtedness owing by Haines & Co. to said Boyd; they can neither admit nor deny the same, but if it is material herein they require strict proof thereof. It is true, as alleged in said bill, that at the time of the said several transactions said Haines & Co. owed large amounts of debts, but that they were then insolvent is untrue, but, on the contrary, it is true that at the time aforesaid said Haines
72 & Co. had available assets in excess of their indebtedness to the amount of sixteen thousand dollars; that while it is true said Haines & Co. did owe Toof, Phillips & Co., they were desirous to secure their debt, yet they deny that they did so or that they made any effort to secure the same, regardless of the rights of other creditors, but at the time aforesaid said Haines & Co. were not only able to secure the said defendants, but also to make good and secure all their other liabilities, and they deny that Haines & Co. ever induced at all, or in any manner, the said Hough to convey said property to Mahan, and they deny that said property was bought by said Mahan and from said Hough for the benefit of said Toof, Phillips & Co., or that they paid for the same; but on the contrary they aver that said Mahan bought the property of and paid for it himself, and for his own use and benefit,
73 out of his own funds.

They further aver that in the settling for said property as far as the price thereof went, Haines & Co. were credited on their indebtedness to Toof, Phillips & Co., but said Mahan was charged with the purchase checks aforesaid for said property on the books of Toof, Phillips & Co., and this was in good faith, and the deed made to him was bona fide, and the property therein conveyed is Mahan's property, and in making this settlement they deny it was made with any view of being preferred over any other creditors of Haines & Co., but merely to secure the payment of a debt, justly due, at a time when Haines & Co. had ample available means to pay their other debts. Ex. H. to said bill is a true and correct copy of said deed from said Hough; the original defendants have, subject to the inspection of parties and the order of the court. Defendants have not examined the papers in the bankrupt
74 proceedings of Haines & Co., but will admit they did abandon their claim of homestead, and the same were disallowed, as they should have been. Defendants further say, that the allegations of the bill in regard to a deed of trust, executed by Haines & Co. to J. M. McCurdy and Mahan, the date, amount, terms, and conditions are true, and Ex. K is a true copy of the original, now held by Mahan, subject to the order of the court and inspection of parties.

They further say that under the deed last aforesaid they received one wagon, seven mules, five oxen, and 112 bales of cotton, and the whole received under said deed netted $6,165 55 and no more; a just and true account of the same has been made out by defendants and filed in the said bankrupt proceedings, and after giving full credits to said Haines & Co., there is a balance due defendents of $3,815 $\frac{14}{100}$, less error of
75 $76 $\frac{84}{100}$ and exclusive of a note of $135 90, making accurately $3,874 20, which is now probated in bankruptcy against their estates. Defendants deny that said property came to their hands or possession within four months before the filing of the petition in bankruptcy

of Haines & Co., as charged in said bill. They deny that Haines & Co. were insolvent at the time of making said conveyances, or either of them, or that they contemplated, or were in contemplation of insolvency. They deny that the object of said conveyances, either on the part of Haines & Co., or of defendants, or either of them, was fraudulently to evade the provisions of the act of Congress known and called the bankrupt act, but they were executed in good faith, and for a valuable consideration, without any fraud whatever.

They deny that said Haines & Co. were insolvent; they deny that these defendants knew, or had any cause whatever to believe, said
76 Haines & Co. were insolvent; but on the contrary, as before stated, they were solvent at that time; they again deny that said conveyances and transfers were made in fraud of the act of Congress relative to bankruptcy. They deny that said property was deeded and transferred as aforesaid, to prevent the same from coming into the hands of the assignee of said Haines & Co., as these defendants did not then know nor did they believe even, or have any reason to believe, Haines & Co. could ever go into bankruptcy nor were said deeds made to hinder or delay in any manner the provisions of said act of Congress, nor to prevent the property therein named from being distributed to and among the creditors of Haines & Co. Said conveyances and transfers were made in the usual and ordinary course of business of said Haines & Co., in payment of a portion of their just debts, for a full and valuable consideration, and they here deny all fraud, collusion, and
77 unlawful combination with which they are charged in said bill.

And to the 1st interrogatory they answer, at the time of making of the transfers defendants do not believe said Haines & Co. were able to pay their debts in money; but they were able to do so on a fair market valuation of the property they owned and of their assets generally, and they were then able to do so.

2. The 2d interrogatory defendants answer that the indebtedness of Haines & Co., at the time named, was about $18,000, as shown to me, F. M. Mahan, by their books.

3. And the cost value of their assets would be, at the time aforesaid, about $37,000 00, in stock, notes, and accounts, mostly secured by mortgage.

4. The conveyances were made because Haines & Co., not having the money to pay the debts of these defendants, were willing to give them this property conveyed to them, and to sell to Mahan that sold to him.

78 5. To the 5th interrogatory these defendants have already fully answered, except as to the amount paid by F. M. Mahan to Hough, to discharge his claim on one piece of property hereinbefore named, which was about $740 83; and the same was paid to Hough, in cash, by F. Mahan.

6. To the 6th interrogatory they answer, said Haines & Co. never conveyed any land to F. Mahan, but Hough did; and at the time the debt due by Haines & Co. to defendants was about $3,992 72, due at date of trust deed, and $13,925 63 for subsequent advances up to January 18th, 1868, and $168 28 advances subsequent to that, making a total of $18,086 60, less proceeds of trust property hereinbefore shown.

7. To the 7th interrogatory they answer, at the time said Hough conveyed said lands to F. M. Mahan, he was a partner of the firm
79 of Toof, Phillips & Co.; but in making said purchase from Hough he acted for himself.

8. To the 8th they answer, the only drafts drawn or given on Toof

Phillips & Co., as before stated, were two for $3,034 54 each, by F. M. Mahan, and the drafts were paid, as before stated, there being two in number.

9. To the 9th int'y they answer, that after the deeds and transfers aforesaid Haines & Co. owed Toof, Phillips & Co. the sum of $5,065 00, of which the sum of $1,191 16 was, after that date, satisfied by a portion of the trust property netting that amount; thus leaving a final balance of $3,874 00.

10. To the 10 int'y they answer, they have already stated how much Mahan paid Hough, but the matter never went into the accounts of Haines & Co., as it had no connection with the transaction between said Haines & Co. and said Toof, Phillips & Co.

11. To the 11 int'y they answer, that they have stated and
80 made known all they know in relation to the matter and things contained in said bill; and now, having fully answered, they pray to be hence dismissed, with their reasonable costs, &c.

GARLAND & NASH, *Sol's.*

STATE OF TENNESSEE, *Shelby County:*

Personally appeared before me this day Jno. S. Toof, Cha's J. Phillips, and F. M. Mahan, and made oath in due form of law that the facts set forth in the foregoing answer as of their own knowledge are true, and those on information and belief they believe to be true.

JNO. S. TOOFE,
CHA'S J. PHILLIPS,
F. M. MAHAN.

Sworn to and subscribed before me this 29th day of December, 1868.

[L. S.] HUME F. HILL,
U. S. Com'r Dist. West Tenn.

81 Filed January 6, 1869.

CHA'S P. REDMOND, *Clerk.*

And afterwards, on the first day of February, A. D. 1869, it being yet of said October term, the following further proceedings were had, to wit:

RUFUS W. MARTIN, ASSIGNEE OF W. P. Haines & Co.,
vs.
TOOF, PHILLIPS & CO.

And now come said complainants, by Watkins and Rose, their solicitors, and file herein their replication to defendants' answer, and this cause being at issue, it is ordered that the same be set down for final hearing on the fifth day of April, 1869; and which replication is in the words and figures following, to wit:

82 In the United States district court for the eastern district of Arkansas.

RUFUS W. MARTIN, AS ASSIGNEE IN BANKRUPTCY of Haines & Chetlain, pl'ffs,
vs.
TOOF, PHILLIPS & CO., DEF'TS. } In chancery.

The replication of the said plaintiff to the answer of the said defendants: This repliant, saving and reserving unto himself all manner of

advantage of exception to be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, saith that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants; without this, that the said defendants' answer is true
83 or sufficient in law; all which matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

WATKINS & ROSE,
For Plaintiff.

Filed February 1, 1869.

CHA'S P. REDMOND, *Clerk.*

And afterwards, on the 3d day of February, A. D. 1869, it being yet of said October term, the following further proceedings were had, to wit:

RUFUS W. MARTIN, ASSIGNEE OF W. P. Haines & Co.,
vs.
TOOF, PHILLIPS & Co.

And now on this day come into court said defendants, by Garland and Nash, their solicitors, and on their motion it is ordered that said defendants have leave to take the depositions of witnesses gen-
84 erally, before any judge, justice of the peace, notary public, or United States commissioner for any of the States or Territories of the United States, to read in evidence on the trial of this cause.

And afterwards, on the 5th day of February, 1869, it being yet of said October term, the following further proceedings were had, to wit:

RUFUS W. MARTIN, ASSIGNEE OF W. P. Haines & Co.,
vs.
TOOF, PHILLIPS & Co.

And now on this day come into the clerk's office said complainant, by Watkins & Rose, his solicitors, and on their motion it is ordered that said complainant have leave to take the depositions of witnesses generally, before any judge, justice of the peace, notary public, or
85 United States commissioner for any of the States or Territories of the United States, to be read in evidence on the trial of this cause.

And afterwards, on the 11th day of March, A. D. 1869, before the clerk in vacation, the following further proceedings were had, to wit:

R. W. MARTIN, ASSIGNEE OF HAINES & CHETLAIN,
vs.
TOOF, PHILLIPS & Co.

And the parties hereto having filed their written consent, signed by their respective solicitors, in conformity to rule 69 of chancery practice, in words and figures as follows:

Eastern district of Arkansas, in the United States dist. court.

R. W. MARTIN, ASSIGNEE OF HAINES & CHETLAIN,
vs.
86 TOOF, PHILLIPS & CO.

The parties in this suit do hereby agree that the depositions taken herein and returned to the clerk of said court may be opened by said clerk.

GARLAND & NASH,
For Def'ts.
WATKINS & ROSE,
For Compl'ts.

It is ordered that the depositions on file in this cause be opened and published by the clerk.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

87 Be it remembered that at a district court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 4th day of October, anno Domini one thousand eight hundred and sixty-nine, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, judge, presiding and holding said court, the following proceedings were had, to wit:

And on the 5th day of October, A. D. 1869, it being yet a day of the said October term, the following further proceedings were had, to wit:

RUFUS W. MARTIN, ASSIGNEE OF W. P. HAINES & CO.,
vs.
TOOF, PHILLIPS & CO.

And now comes the complainant, by Watkins and Rose, his solicitors, and come the defendants by Garland and Nash, their solicitors, and this cause is submitted to the court upon the pleadings and evidence without argument.

88 Upon said hearing, the following depositions were used in evidence, to wit:

Depositions of witnesses taken and subscribed before me, G. D. T. Malone, an acting justice of the peace for the county of Woodruff, in the State of Arkansas, duly commissioned as such, on the 23d day of February, A. D. 1869, between the hours of 9 a. m. and 4 p. m. of said day, at the clerk's office in the town of Augusta, in the county of Woodruff, in the State of Arkansas, in pursuance of a commission hereto annexed, and to be read as evidence in a certain cause now depending in the district court of the United States for the eastern district of Arkansas, wherein Rufus W. Martin, assignee in bankruptcy of W. P. Haines, and Charles E. Chetlain, bankrupts, is plaintiff, and Toof, Phillips & Co. are defendants, on the part of the plaintiff.

89 CHARLES E. CHETLAIN, a witness known to me to be of lawful age, being to me at the same time and place aforesaid produced, and being by me the first sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in

the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

I am now living in Woodruff County; am one of the bankrupts herein alluded to, and a member of the late firm of W. P. Haines & Co., of Augusta, Arkansas. On the 18th day of July, 1868, and prior thereto, the firm of W. P. Haines & Co. was the owners of the undivided half of a certain lot in the city of Augusta, upon which was situated the store-house of W. P. Haines & Co.; was at the same time the owners of lots No. 1, 2, & 3, in block No. 25, for
90 which W. P. Haines and myself held a bond for a title. On or about the 18th day of January, 1868, W. P. Haines & Co. executed a deed to Toof, Phillips & Co., for the undivided half of the lot and store, then owned and in possession of said W. P. Haines & Co., and at the same time transferred the bond held for title to the three lots before mentioned in block No. 25 to F. M. Mahan, one of the firm of Toof, Phillips & Co.; the consideration for the above-named property was for the undivided half of lot and store-house, about eighteen hundred dollars, to be credited upon the account of the indebtedness of W. P. Haines & Co., to said Toof, Phillips & Co., W. P. Haines & Co. at that time being largely indebted to said Toof, Phillips & Co.; the consideration for the three lots in block No. 25, heretofore mentioned, was said F. M. Mahan giving his two drafts for about thirty-five hundred dollars each, one of them to W. P. Haines, and the other to myself, (C. E.
91 Chetlain,) upon Toof, Phillips & Co., of Memphis, Tennessee. I think Mr. Haines gave these two drafts to F. M. Mahan to forward to Memphis, to be credited to our account with Toof, Phillips & Co. Neither W. P. Haines, to my knowledge, or myself ever received in cash any money for the aforenamed property. W. P. Haines & Co., on the 18th day of January, 1868, was hard up, and could not pay our notes as they came due. Previous to this time, viz., the 18th day of January, 1868, W. P. Haines and myself had contemplated bankruptcy among ourselves. We had not notified Toof, Phillips & Co. of our intention to take the bankrupt law. F. M. Mahan represented the firm of Toof, Phillips & Co. at that time. I had several conversations with F. M. Mahan relative to our finances, and told him the amount, or near the amount of our indebtedness. His advice was to get extensions,
92 and he would help us get through. After his promises to advance us more goods, we concluded not to go into bankruptcy, but go on in business. I told Mr. Mahan that we could not pay out. It was before F. M. Mahan promised to help us that I told him we could not pay out.

There not being time to complete the taking of the testimony under the commission on this day between the hours in the caption named, the further taking the same is adjourned until to-morrow morning at nine o'clock.

G. D. T. MALONE, *J. P.*

At nine o'clock a. m., Feb'y 24th, A. D. 1868, the commission was again opened, and the taking of testimony thereunder resumed in pursuance of the adjournment aforesaid, all the parties being present and consenting thereto.

The taking of further testimony was resumed at the office of
93 Messrs. Patterson and Thompson, in the city of Augusta, and State of Arkansas, and the examination of Charles E. Chetlain continued.

And further the deponent says, that in a conversation with F. M. Mahan, previous to the transfer of the real estate aforesaid, that such was the state of our finances that if he would assume our liabilities, and give us a receipt, we would turn over all our assets to him; he did not accept. On reflection, I think the bond was made from Hough to Ward Boyd, and transferred from Ward Boyd to us; am not certain. I think this is the bond I alluded to yesterday, transferred to F. M. Mahan. About the first of January, 1868, the Sheriff of Woodruff County did levy on the goods belonging to W. P. Haines & Co., in the store-house of W. P. Haines & Co., in Augusta, on execution in favor of Henry Weghe, against Charles E. Chetlain, which caused us to suspend
94 business for few days, until the levy was dissolved by order of the sheriff, at or about the 15th day of January, 1868. I think the cash value of the undivided half of the store-house and lot of W. P. Haines & Co. was about eight hundred dollars. I think the cash value of the three lots and dwelling-house, with the appurtenances, was at that time about four thousand dollars. I have no interest whatever in any of the property herein alluded to. The witness upon hearing the testimony read over, given by him yesterday, says there is an error in the statement that Mr. Haines gave the two drafts to F. M. Mahan to forward to Memphis, and states that they were not forwarded by F. M. Mahan, but by W. P. Haines.

Cross-examination by defendant:

As near as I can remember the liabilities of W. P. Haines & Co.,
95 on the 18th day of Jan'y, 1868, was about thirty-one thousand dollars. The books of W. P. Haines & Co. will show the amount of liabilities of the firm. The nominal assets of H. P. Haines & Co. at that time, embracing book accounts, notes, chattels, personal property, real estate, and cash on hand, was about thirty-six thousand dollars. I had no individual property. I think the bond for title was to W. P. Haines & Co. to the three lots in block No. 25. Prior to the 18th of January, 1868, there was settlement made between W. P. Haines and myself of the improvements upon these three lots, one-half of which was charged up to W'm P. Haines, and the other half to C. E. Chetlain individually. The entire cost of the improvements on these lots was about six thousand dollars.

(Objected to by the assignee.)

In rendering original schedules we claimed the improvements and lots in block No. 25 as a homestead, which we afterwards abandoned.
96 We filed our petition in bankruptcy about the 28th day of February, 1868.

(Objected to by the assignee.)

We continued paying some of the liabilities of the firm to within about thirty days of the filing of our petitioners in bankruptcy.

At the time of the conveyances to Toof, Phillips & Co. and F. M. Mahan, our indebtedness to Toof, Phillips & Co. was about twelve thousand dollars of a bona fied liability, for which we had received value. At the time I made these conveyances I done it in good faith, without intending fraud.

(Objected to by assignee.)

These conveyances to Toof, Phillips & Co. and F. M. Mahan were made not to prefer them as creditors, but it was our intention, at that time, to go on and pay our general liabilities. At the first part of the season, say about the first day of October, 1867, that we had sufficient
97 assets to meet our liabilities. I think about November, 1867, I

told Col. Patterson that we had assets enough to pay our debts. It might have been as late as the first of December. I don't recollect of paying any debts, but one of about five hundred dollars, of any considerable amount during the fall and winter of 1867 and 1868, except to Toof, Phillips & Co. I think, in the conversation with Col. Patterson, I said we had ample means to meet our liabilities, and all we wanted was reasonable time. The exhibits hereto attached, marked A & B, are exact copies of the drafts given to W. P. Haines and myself by F. M. Mahan, in payment for lots 1, 2, and 3, in block No. 25, and all the appurtenances thereto belonging. And exhibits C & D, hereto attached, are exact copies of the original letters written by W. P.
98 Haines & Co. to Toof, Phillips & Co., of Memphis, Tenn. The estimate I made of the value of the property conveyed to Toof, Phillips & Co. and F. M. Mahan, was made under the circumstances of the stringency of money matters at that time. Our indebtedness to Toof, Phillips & Co. consisted of one note and a general running account. We were in the habit of drawing drafts on Toof, Phillips & Co. to settle liabilities due to other parties. Exhibits E & F are exact copies of original, which were genuine.

(Objected to by assignee.)

At the time these conveyances was made to Toof, Phillips & Co. and F. M. Mahan, we expected to realize about six thousand dollars of debts due us through the agency of the Freedman's Bureau, which we failed to get.

(Objected to by assignee.)

At the time of the conveyance to Toof, Phillips & Co. and F.
99 M. Mahan, we did not expect to realize the whole amount mentioned in Exhibit C. during that season. The failure of parties mentioned in Exhibit C., and others, to pay their indebtedness that season, was the cause of our asking an extension.

E. M. Schettleworth's indebtedness to W. P. Haines & Co., mentioned in Exhibit C., was about four thousand dollars. The taking of the benefit of the bankrupt law by these parties, mentioned in Exhibit C., and others, was one of the causes that induced W. P. Haines & Co. to go into bankruptcy.

(Objected to by assignee.)

None of the creditors of W. P. Haines & Co., to my knowledge, were willing to extend time of payment, except Toof, Phillips & Co., who promised to carry us through. I do not remember of W. P. Haines & Co. paying a draft of Derby & Day's, on W. P. Haines & Co., for two hundred and forty-two dollars and twenty-seven cents, with inter-
100 est, at any time during the months November or December, 1867. Exhibit G., hereto attached, is a correct copy of a letter written by W. P. Haines, one of the firm of W. P. Haines & Co.

(Objected to by assignee.)

In my previous statement, in regard to extensions, I would further state, that during the month of November, 1867, I was in Cincinnati, and our creditors agreed to extend time, but not beyond the then present season. My understanding of the end of the season is to the first of March or April, as but little cotton goes forward after the first of April.

Re-examination by complainant:

My opinion was, on the 18th of January, 1868, that we could not collect more than half of the debts due W. P. Haines & Co. during that season.

(Objected to by def't.)

The season of 1867 and 1868 commenced very prosperous about the

first of November, 1867, but before the 18 of January, 1868, cot-
101 ton declined, and the consequence was ruinous to trade. In consequence of the great decline in cotton, from the 1st of November, 1867, to 18 of January, 1868, it was impossible to realize on claims that we had considered good, and many persons left their crops in the field and would not gather them.

W. P. Haines was the bookkeeper for W. P. Haines & Co., and did the general correspondence. The letters of W. P. Haines & Co., herein exhibited, are all in the handwriting of W. P. Haines, except Exhibit C., which was written by myself. The two drafts herein exhibited, and marked A & B, were understood by me to go to the credit of W. P. Haines & Co. on our indebtedness to Toof, Phillips & Co. I cannot swear as to any understanding between Haines and Mahan, but the understanding between me and Haines was, that these drafts
102 were to go to the credit of W. P. Haines & Co. on our indebtedness to Toof, Phillips & Co., but for myself; it was expressly understood between me and Mr. Mahan that the drafts should go to our credit. To my knowledge there were no drafts drawn on Toof, Phillips & Co. after the 18th of Janu'y, 1868.

(Objected to by def't.)

Question. You speak in your cross-examination of the failure of certain parties, mentioned in Exhibit C., and other parties not therein mentioned, to pay W. P. Haines & Co., in consequence of their going into bankruptcy as one cause of W. P. Haines & Co. going into bankruptcy; was there any other cause?

(Objected to by def't.)

Answer. When bond was transferred of lots 1, 2, & 3, in block No. 25, Mr. Mahan he promised to give us a bond for a title payable then or five years, as we desired; afterwards refused to make the bond, also promising to forward us, on his return to Memphis, a bill of gro-
103 ceries amounting to about one thousand dollars, more or less, which goods never were sent; we, considering that said Toof, Phillips & Co. were not acting in good faith, determined to give the benefit of the whole of our assets to our creditors, equally, by going into bankruptcy.

Question. Was the transfer of the undivided interest of W. P. Haines & Co. to store-house and lot a part and parcel of the transaction with Toof, Phillips & Co. to secure aid to enable you to go on with your business?

(Objected to by def't.)

Answer. It was.

It being the hour of adjournment, it is ordered that the commission be closed until to-morrow morning, 9 o'clock.

G. D. T. MALONE, *J. P.*

THURSDAY, *February* 25, 1869.

The commission opened according to adjournment, and the parties being present, C. E. Chetlain was again called, who continued to testify for the complainant as follows, to wit:

104 On the latter part of Dec., 1867, and first of January, 1868, some of our creditors sent agents here to collect money due them by W. P. Haines & Co.; we did not pay the claims, because we did not have the funds to do so. F. M. Mahan, of the firm of Toof, Phillips & Co., was here during the time our goods were levied on by the sheriff. We had an interview with Mr. Mahan upon the subject.

(All the above objected to by the defendant.)

The only time that I remember that we had a conversation with R. W. Martin in regard to our financial position, and ask his advice. This conversation occurred in our store-house, up stairs, about the time our goods were levied upon. Can't state positively whether the goods were under levy or not at the time. We told R. W. Martin, that
105 we could not meet all the indebtedness of W. P. Haines & Co., much less the individual liabilities. Our reason for applying to R. W. Martin was, that we could not get legal advice in this place; the advice was sought by W. P. Haines & Co.

(The above objected to by defendant.)

The letter exhibited, marked H, I recognize, to the best of my knowledge, as the handwriting of F. M. Mahan; I mean the signature. W. P. Haines & Co., received said letter.

(Objected to by defendant.)

Re-cross-examined:

I cannot state whether the conversation had with R. W. Martin was before or during after the levy, but about that time we did apply to W. J. Thompson, of this place, for legal advice, and he declined to
106 take the case; I mean the case of the levy upon our goods. Our interview with R. W. Martin was in reference to that case and other matters. The subject of my interview with R. W. Martin was to ascertain our legal rights in reference to the levy. John Walker, of Cincinnati, Ohio, applied to us for payment of liabilities due himself and as agent for Mason and Fant, of Cincinnati, Ohio. During Christmas week of 1867 we told him that we could not pay at that time.

Question. When Walker, as above referred to, left Augusta, had Haines & Co. stated to him that they would pay at a future time, or give him any assurance in substance of such intention, or did they inform him that they would not pay in future?

(Objected to by assignee.)

We told him that we would try to pay him at some future time, no time specified, and he left us feeling very gloomy. We gave him
107 fifty dollars to travel home on, I believe, on account. Our indebtedness to Mason and Fant was about twelve hundred dollars, and to Walker about seven hundred dollars. I do not remember of any payments being made to any other parties. I do not remember the advice given me by R. W. Martin.

(Objected by assignee.)

(Question.) At the sale of your effects by the assignee at Little Rock, did you acquire a title by purchase, or otherwise, in a tract of land sold in the State of Iowa; if not by purchase, have you obtained said land since from a man by the name of Davis, or other person? State all you know about said sale and present owner.

(Objected to by assig. & sustained by the court.)

(Answer.) I refuse to answer.

(Objected by ass'g.)

We did not dispose of any stock for several weeks previous to our rendering our schedule in bankruptcy, to my knowledge. The stock that I wrote to Toof, Phillips & Co. about was under mortgage to them.
108 We might have disposed of some stock within two months of our rendering our schedule in bankruptcy. No stock mortgaged to Toof, Phillips & Co. were ever disposed of by us, to the best of my knowledge.

(Objected by ass'g.)

We had an open account with J. M. McCurdy in the year 1867, but not

later than 24th of Feb'y, 1868. Mr. J. M. McCurdy did twice during the winter of 1867 and 1868 go on our bond. From a general understanding J. M. McCurdy was acting as the agent of Toof, Phillips & Co. We did, in render a schedule in bankruptcy, embrace all of our notes, book accounts, and other obligations, to the best of my knowledge. We turned over to the assignee all books pertaining to the business firm of W. P. Haines & Co., embracing cash book. We did not keep a separate cash book, to the best of my knowledge.

(Objected by ass'g.)

C. E. CHETLAIN.

G. D. T. MALONE, *J. P.*

109 FEB'Y 25TH, 1869.—The hour of 4 p. m. having arrived, it is ordered that the commission be closed until to-morrow morning at 9 a. m.

G. D. T. MALONE, *J. P.*

FRIDAY MORNING, 9 O'CLOCK A. M.,
Feb'y 26, A. D. 1869.

The parties being present, the commission is opened; whereupon the complainant introduced H. H. FRISBEE, a witness of lawful age, who, being duly sworn to testify the truth, the whole truth, and nothing but the truth, deposed as follows, to wit:

I reside in Augusta; have been living here about one year and a half, during the months of November, December, of 1867, and January '68, with Haines & Chetlain; I was employed by them most of the time; I was assisting the workmen in building the house, and the latter part I was assisting them in the store; I have some knowledge of the transfer of property made by Haines & Chetlain to Toof, Phillips & Co.
110 and F. M. Mahan, but was not a witness to the same; the transaction took place some time in January, 1868; I was in the latter part of December, 1867, acquainted with the financial condition of Haines and Chetlain, and from that time to the time of filing their petition in bankruptcy; they called my attention to the state of their assets, and I assisted Mr. Haines in making up his *his* balance-sheet; the result was that their available assets was not sufficient to pay their indebtedness; this balance-sheet was made about the 1st of Jan'y, 1868. I know that Mr. John Walker, of Cincinnati, was here about that time. I do not know what the general opinion of the public was in regard to their financial status. I was living with Haines & Chetlain at the time the undivided interest of C. E Chetlain was levied upon by the sheriff, about the last December, 1867, and the house was closed and bus-
111 iness suspended for some days on account of it. Mr. F. M. Mahan was here between the time of levy and sale, and at the time of the sale; my impression is they did not do any business during the time of the levy and until time of sale. I have some knowledge o what property was worth in this place about the 18th Jan'y, 1868; the financial condition of the country at that time was very bad, and money was scarce and hard to get, and but little produce in the country to sell. The cost value of the undivided interest of Haines & Chetlain in the property known as the store-house and lot was not worth more than one thousand dollars; the value in cash of the lots and house known as the residence of Haines and Chetlain, with the encumbrance at that time, was not more than three thousand dollars. I have never seen but one of the members of the firm of Toof, Phillips & Co., to my knowledge.

Cross-examined by def't:

112 I do not know of the whereabouts of the balance-sheet made by myself and Mr. W. P. Haines. I transacted business for them from after the 25th December, '67, until some time in January, '68; it was within ten days after the 1st Jan'y, '68, that we commenced making a trial balance, and my knowledge of their business was derived from the books and accounts and from the parties themselves. During that time this balance-sheet was made by taking the amounts of their indebtedness in figures and the amounts of assets in figures and deducting one from the other. In making this estimate, we made it by classing the assets into what was termed good claims, doubtful, and total loss. The best of my recollection the liabilities of the firm at that time was from 32 to 33 thousand dollars; the nominal assets at that time were in excess of 36 thousand dollars. I had a general knowl-

113 edge of the people of one part of the country, and with the other I have not. I was well acquainted with the people of the northern part of this county, on the west side of Cache River, in Bay and White River Townships; with the balance of the country my acquaintance was limited. What other knowledge I had of the financial condition of parties in other parts of the country was special and limited. I had resided in the county about 13 months. My previous residence was outside of the State. My residence is in Augusta, and has been for some time. I bought two bales of cotton from Haines & Co. in the latter part or the first of February, 68, and paid them for it. They were still going on with their business. After that I bought two other bales of cotton from them; it was before their application in bankruptcy was filed. I think late in February there was no cotton shipped for

114 them in my name. I have been the confidential friend of Mr. Chetlain since October, 1867.

Re-examined by complainant:

Previous to my moving to Augusta I was living with G. D. T. Malone, in White River Township. I attended his monthly courts during that time, and kept his docket for him, filed summons and executions, and done most of the legal writing for him in his office. There was a great deal of business done during the time.

H. H. FRISBEE.

After the examination of H. H. Frisbee had been concluded the complainant then introduced J. M. McCURDY, a witness of lawful age, who being duly sworn to testify the truth, the whole truth, and nothing but the truth, deposed as follows, to wit:

115 I reside in Augusta, and have been engaged since the surrender in a general commission and grocery business, also agent for the Southern Express Company for about three years, or since the establishment of an office here. I am acquainted with the gentlemen composing the firm of W. P. Haines & Co. My books show business transaction to as late a date as the 25th Feb'y, 1868. I also know the firm of Toof, Phillips & Co., composed of Jno. S. Toof, Charles Phillips, and F. M. Mahan. The paper here presented me and marked Exhibit (H.) I recognize as resembling a handwrite that I have received frequently from the same firm. The partners composing the firm reside in the city of Memphis, Tenn. The Southern Express Company is frequently used as a collecting medium. I received some notes from Toof, Phillips & Co., and Freedman & Bros. against W. P. Haines & Co., for collection. I think it was somewhere about the last of December, '67, or January,

1868, not certain about dates, as my memory is treacherous about
116 dates. The reason of my recollecting the Freedman Bro. claim was on account of receiving it the second time. I presented them for payment to W. P. Haines & Co., and they said they could not pay them at that time, and they did not pay them to me, and I think I returned them to the office at Memphis. I know something of the financial condition of W. P. Haines & Co., of their indebtedness to Toof, Phillips & Co., and of complaints of other parties, and knew something of the value of their business through the country, and of their general condition, and from all these facts thought it doubtful about their being able to pay their debts. This was during months of December, '67, and January, 1868. I wrote to Toof, Phillips & Co. that I thought they had better look to their interests, as my conviction was that it was doubtful about their being able to collect their debt from W. P. Haines &
117 Co. I think shortly after writing this letter a representative of the house came round to look after the matter. I think it was Mr. F. M. Mahan.

Cross-examined:

My memory as to dates is very deficient. I understood, from Mr. F. M. Mahan, that he had made a satisfactory arrangement with W. P. Haines & Co., in reference to their claim against them, and that he intended to extend them further favors to enable them to carry on their business; he also at the same time had a further conversation with me about their business. He said the parties might be annoyed by some suit coming against them, and if they were required to give bond in the matter, for me to go on the bond and they would indemnify me; and in accordance with such instructions I went their security in two instances. I understood, from Mr. Mahan in his instructions, to
118 give them such assistance as they might require in case of suits at law. I had business transactions with W. P. Haines & Co. up to the time of their bankruptcy. I had no fears as to my claim against them, as my claim against them was small. During the winter of '67 & '68 there was a general spluttering in business circles, and it was thought that there were several houses that would go by the board, but who met their liabilities and are still in business. About December, '67, and January, February, '68, I shipped for W. P. Haines & Co. some cotton, but I do not recollect the exact amount, but can tell by reference to my books. I have always, until last year, made the close of my business season about the middle of May or first of June. I think it was some time in January, 1868, when Mr. F. M. Mahan was here. Business revived from about the first of February, and
119 gradually advanced until about the middle of April. Cotton was worth about 18 to 20c. lb. about the 24th Feb'y, 1868. On the 18th Jan'y cotton was much lower, but I do not recollect what it was worth—about 9 to 12c. The advance in cotton caused a great many debts to be met that could not have been paid had it not been for that; in fact, it made collections much easier than was anticipated in January.

Re-examined by complainant:

I think by the 18th January, 1868, that the greater bulk of the cotton had passed out of the producers' hands and into that of the factors. In my absence from my office Mr. John Cook attended to my business in the express office. I think Mr. F. M. Mahan gave a description of the arrangement that he made with W. P. Haines & Co., but I do not recollect now what it was.

J. M. McCURDY.

120 Also, at the same time and place, appeared ALEX. W. JONES, who, being of lawful age, was duly sworn, deposed, to wit:

It is generally understood by merchants that the business season of this country is from the 15th October to the middle of March.

ALEX. W. JONES.

Also, at the same time and place, appeared JNO. T. HAMBLET, who, being of lawful age and duly sworn, deposes, to wit:

I reside in Augusta, and have done so for a number of years. The business season of this country from the 1st November, 1867, to the middle of January, 1868, was not prosperous, or what merchants would call a good season. I do not recollect when cotton commenced advancing. Money, about the middle of January, '68, was very scarce and time very tight. I think the undivided interest in the house and lot
121 known as the store of W. P. Haines & Co. was worth at that time about ($1,200) twelve hundred dollars; the 3 lots and house known as the residence of W. P. Haines & Co. was worth at that time about ($3,500) thirty-five hundred dollars. The firm of which I am a member had a claim against the firm of W. P. Haines & Co. since Dec., '67, which was presented several times for payment previous to their bankruptcy, but which was never paid.

Cross-examined by defendant:

The valuation upon the property was made upon the basis of the hardness of times. The property would have brought more money probable before that time, and would now bring more than that valuation. The advance of cotton in the latter part of the season of '67 and '8 saved a great many merchants.

JNO. T. HAMBLET.
G. D. T. MALONE, *J. P.*

122 The hour of 4 o'clock p. m. having arrived, it is ordered that the commission be closed until to-morrow morning at 9 o'clock a. m.

SATURDAY MORNING, 9 O'CLOCK A. M., *Feb'y 27th*, 1869.

The parties being present, the commission was opened, whereupon the complainant introduced JOHN J. COOK, a witness, of lawful age, who, being sworn to testify the truth, the whole truth, and nothing but the truth, deposed as follows, to wit:

I reside in Augusta. I am doing business for J. M. McCurdy; have been so engaged for 3½ years; have acted as his clerk in the So. Express office in his absence. Mr. McCurdy requested me to write a letter to Toof, Phillips & Co., of Memphis, I think about the last of December, '67, or Jan'y, '68. About that time the Southern Express Company at this place received a note for collection against W. P. Haines & Co. for $900, which I presented for payment, but it was not paid. The
123 note was in favor of Freedman & Bro's, of Memphis, Tenn.

Cross-examined:

I have nothing to do with the ac. sales of cotton.

J. J. COOK.

G. D. T. MALONE, *J. P.*

FEB'y 27th, A. D. 1869.

The plaintiff, R. W. Martin, as assignee, having closed for the time being, the defendants proceeded to take depositions in accordance with the notices served.

THO'S HOUGH, a witness known to me to be of lawful age, being duly sworn according to law, deposes and says:

In the first I owned the three lots Nos. 1, 2, & 3, in block 25, and I sold the same to Ward Boyd, who afterwards transferred the same to W. P. Haines & Co. I think I sold the grounds for $700 00 *dollars*. I
124 am not certain. I mean the grounds upon which the residence of W. P. Haines & Co. was erected. The paper marked Exhibit (I,) a true copy of which is hereto attached, was paid to me by F. M. Mahan, and the same was the consideration for lots Nos. 1, 2, & 3, in block 25, in the town of Augusta. I executed to F. M. Mahan a deed to for the same. The paper marked Exhibit (J) is a copy of the deed executed by me to F. M. Mahan upon the payment of said note, and I never before had made any deed to the land. I never executed to any person any conveyance, except to Ward Boyd and F. M. Mahan, for said lots; no instrument of writing of any kind ever passed between myself and W. P. Haines & Co. Upon the request of R. W. Martin, I delivered to him the bond for title executed by me to Ward Boyd, and that it has never been in my possession since.

Cross-examined by complainant:

125 The transfer of these lots from Ward Boyd to W. P. Haines & Co., and from them to F. M. Mahan, was no part of the transaction between myself and Ward Boyd. I sold Mr. Boyd other lots of ground, and in consideration of what he was owing me, I received from him W. P. Haines & Co. note. I think the note was for seven hundred dollars, with interest from date at the rate of 10 per cent. I do not recollect the date of the note. [My understanding at the time was that W. P. Haines & Co. note was a vendor's lien on lots Nos. 1, 2, & 3.]

(The answer in brackets objected to by defendants.)

That it was some time after the transaction above alluded to before I was called upon by F. M. Mahan to make deed to said lots. I received a letter from F. M. Mahan stating that he had transmitted the money to Baltimore for me. I was notified by W. P. Haines & Co., before making the deed to the property, not to make it.

THOS. HOUGH.

126 THOMAS E. ERWIN, a witness of lawful age, was then introduced, and being duly sworn deposed as follows, to wit:

I am acquainted with the transaction between F. M. Mahan and Thos. Hough, in reference to the trade between Mr. Hough and Mr. Boyd, for which Mr. Mahan became responsible for the payment to Mr. Hough for lots Nos 1, 2, & 3, in block 25, and for which Mr. Hough executed deed to Mahan. Mr. Mahan executed his note to Mr. Hough for $740 83 *dollars*, which note was subsequently paid by F. M. Mahan, which is the same as exhibited in the deposition of Thos. Hough and marked Exhibit (I,) and shown to me. I am positive that the note executed by Mahan to Hough was paid. As assessor of revenue I tagged from 15th November, '67, to 24th Feb'y, '68, for W. P. Haines & Co., 22 bales of cotton, shipped to New Orleans, to wit: On the 16 Dec'r, '67, 6 bales, on Str. Ezra Porter; on 19th Dec'r, '67, on J. D. Perry, 4 bales; on J. D. Perry, 30 Dec'r, 7 bales; on the Ezra Porter, 31 Jan'y, '68, 2 bales cotton;

127 on the 6th Feb'y, '68, was shipped on J. D. Perry, 3 bales, and on str. Liberty, on 25th Feb'y, 1868, 4 bales.

(All the answer by witness in regard to cotton shipments objected to by complainant.)

Cotton commenced to advance in the latter part of Jan'y, 1868, and from that time continued to advance for the balance of the season, subject to slight fluctuations of the market. The advance of cotton was a great source of relief to merchants and producers, or at least that was my general understanding. I have no knowledge of the value of the property, but my understanding from Mr. Chetlain was that the work cost a great deal more than it ought to have done, and I thought so myself at the time of the trade between Ward Boyd and F. M. Mahan. The buildings were new and were completed, with the exception of the plastering, which was nearly completed. The building was commenced in the summer of 1867. I consider it a good and substantial improvement.

128 My information from Mr. Chetlain was that it cost between six and seven thousand dollars. I consider it a good and comfortable building, and, I think, the 2d best building in the town.

Cross examination by complainant:

In the trade between W. P. Haines & Co., Mr. Boyd, and F. M. Mahan, I took the responsibility to act as Mr. Hough's agent, and learned afterwards that Mr. Hough did not like it. The consideration of the F. M. Mahan note was for the note held by Mr. Hough against W. P. Haines & Co. W. P. Haines & Co. were the owners of the lots No. 1, 2, & 3, in block 25, subject to the encumbrances in favor of Mr. Hough. I think they, W. P. Haines & Co., were living in the building at the time the transaction occurred, and during that time Mr. F. M. Mahan was a guest at Mr. Chetlain's. All the evidence of title in W.

129 P. Haines & Co., or Ward Boyd to his property, was surrendered up so that the deed could be made direct from Mr. Hough to F. M. Mahan. Although Mr. Hough was not pleased with the transaction, he confirmed my action in the matter as his agent.

THOS. E. ERWIN.

The hour of 4 o'clock p. m. having arrived, it is ordered that the commission be closed, to stand closed until Monday morning at 9 o'clock a. m., March 1st, 1869.

MARCH 1ST, 1869.

The commission opened this day, 9 o'clock a. m.

And J. H. PATTERSON, a witness of lawful age, being presented by the defendant, was duly sworn for that purpose, testified as follows, to wit:

I reside in the county of Woodruff, Arkansas, and have for a number of years. I am a lawyer by profession and practice. I was practicing law in Augusta, in the year 1869, with L. C. Gause. Our style was Patterson and Gause. We done a considerable collection. We got

130 claims against W. P. Haines & Co., who are the bankrupts mentioned in the commission. We also had a claim against C. E. Chetlain, individually, in favor of Henry Weghe. We sued and got judgment on that claim at the Sept. term, 1869. The claim was about 2,100$, more or less. I can tell the exact am't by reference to the judgment. Chetlain was absent during the early part of the fall, and perhaps until near November. I did not take execution against him, because of his absence, as I did not wish to be unnecessarily harsh in col-

lecting the demand; and I was informed by Haines, in the absence of Chetlain, that the latter would doubtless settle promptly upon his return. I do not know the date of his return, owing to my bad health. I was confined at home when I understood he was at home. I called his attention to the demand; I don't remember whether by note or messenger, nor do I recollect the precise date, but think it was in Nov. Haines
131 & Chetlain both came to see me, and spoke finely of their business and ability to pay, and I was assured by them that their means were ample, and all they wanted was time to make their assets available. I understood from Haines (in the presence of Chetlain) to say that the assets of W. P. H. & Co. were at least double their liabilities, or to use language to that import; and under these statements I felt perfectly at ease with respect to the Chetlain judgment, and told them I would not disturb them with an execution. In the meantime we got some claims against the firm; one in favor of Duby & Day, through George West, Memphis; it was presented in due course of business, and paid promptly about the 8th of December, with in'st, $242 27 and in'st. On other claims, in favor of Orgill, Brother & Co., received some time in that fall, they promised to pay, but asked time to get their produce to market; and owing to my continued bad health I did not give
132 much attention to it. I had occasional interviews with Haines & Chetlain, as late as some time in December; they at all times impressed me with the idea that they had ample means, and that the whole cause of deferring payment of claims when presented, was owing to the temporary pressure of the times and the difficulty of making prompt collections. They at no time expressed to me any doubt of their entire ability to pay. I left home early in January, and did not return until September. I know something of the cotton market in the winter of 1867 and '68. On the 18th January, 1868, I sold cotton at Memphis for 15½ cents, and my impression is, that it continued to advance until it went to 20 cents, which it attained some time in February.

(The complainant objects to any declarations made by Wm. P. Haines or C. E. Chetlain to witness as to their solvency.)

Cross-examination:

133 About the 15th of November, '67, I presented a note in favor of Orgill, Bro's & Co., to W. P. Haines & Co., for payment. I think I left home about the 12th January, '68, and I stayed away until fall. I may have had a conversation with F. M. Mahan respecting the Haines & Co. and Chetlain business, but do not recollect it now; when I met Mr. Mahan I was very ill.

J. H. PATTERSON.

WILLIAM J. THOMPSON, of lawful age, being duly sworn on behalf of the defendant, deposes and says:

Some time during the month of March, or April, A. D. 1868, I had a conversation with Charles E. Chetlain, one of the firm of W. P. Haines & Co., bankrupts, relative to the transactions of said firm with F. M. Mahan, and with Toof, Phillips & Co., of Memphis, Tenn. During the conversation the question of the bankruptcy of W. P. Haines &
134 Co. was spoken of. Mr. Charles E. Chetlain then stated to me that at the time of the conveyances by W. P. Haines & Charles E. Chetlain to F. M. Mahan and Toof, Phillips & Co., they (meaning W. P. Haines & Co.) could not make collections fast enough to meet their liabilities at the time they matured; that they had abundant assets to pay all their indebtedness, and that they (W. P. Haines & Co.) at that time

had never thought of going into bankruptcy, and that the sale of the property aforesaid was made in good faith, and that at the time of the sale they expected to continue in business; that F. M. Mahan had agreed to furnish them with something, which they failed to do, and that so many of their debtors had bankrupted on them unexpectedly after said conveyances, and Toof, Phillips & Co. failed to fill some orders sent them, and considering that they (Toof, Phillips & Co.) had not fulfilled their promises, they (W. P. Haines & Co.) had concluded to bank and
135 schedule the lots on which they lived as a homestead. I never refused to act as attorney for W. P. Haines & Co., except in one instance, and that was when they applied to me to interplead and claim all the property in the store as W. P. Haines's, on the ground that it would take it all to pay the creditors of W. P. Haines & Co. The sheriff, through his deputy, had levied upon the undivided interest of Charles E. Chetlain in the goods of W. P. Haines & Co., by virtue of an execution issued on an individual judgment in favor of Henry Weghe against Charles E. Chetlain. I advised them that they had a right to levy on his undivided interest in said store and sell it, subject to the rights of the creditors of the firm; that W. P. Haines could not come in and claim all the goods as his individual property by interplea. My reason for not attending to the case was, as I informed them, that I was not willing to risk my reputation as a lawyer by advocating as-
136 sumption, which I did not consider law, and that I did not consider their proper remedy to be by interplea. I had been attending to the most of their legal business, and assured them at the time that I was ready and willing to take any legal steps for them that I could, but that I could not urge before a jury as law the points they desired me. They said they thought they could gain it. I told them then to get Mr. Frisbee to represent them, as he could impress upon a jury the ideas they desired to. I was not at that time retained by Toof, Phillips & Co., nor any of W. P. Haines & Co.'s creditors, in any suit against them.

Cross-examination of witness by complainant:

The conversation in reference to employing me as an attorney to interplea for them occurred between myself and W. P. Haines about
137 the 1st Jan'y, '68. On the 25th day of Feb'y, A. D. 1868, I received from R. W. Booth & Co., of Cincinnati, Ohio, a claim against them for collection. I did not present it, as I believe at that time they had filed, or was about filing, their petition in bankruptcy. I had a claim against them myself, as attorney, and I presented it to them, but it was then too late. I had two other small claims against them; one for $50, and one for $75. I received the claims about the first Jan'y, '68. I think I presented the claims to them about the last of Jan'y or 1st Feb'y, '68. My recollection is, that when I presented them that they told me that they would settle them in two or three days. I presented to them again in three or four days, but I did not get the money, nor they did not give me any satisfaction, and I immediately commenced suit.

Re-examined by defendant:

After I received judgment against them on the two claims I
138 held before the expiration of the 10 days the judgment was stayed by J. M. McCurdy for them by requast of F. M. Mahan.

W. J. THOMPSON.

G. D. T. MALONE, *J. P.*

FRANK CARL was then introduced; being of lawful age and duly sworn, deposed, to wit:

The best recollection I have in regard to the price of cotton in the winter of '67 and '68, it was at its lowest figures from 6th to 10th of Jan'y, '68; after that it commenced to advance, and continued to do so until the close of the season, subject to slight fluctuations of the market, and had attained its highest figure about the first of April. It was about 31c. for strict middling. I think it was never higher than 18c. in the month of February, '68, but I cannot say positively. I think that by first of January, '68, the crop of cotton was more than half
139 disposed of, and it might have been two-thirds.

Cross-examined by complainant:

It is a rare occurrence that cotton from this country ever is classed as high as strict middling.

FRANK CARL.

It is admitted and agreed to by the parties that the books of W. P. Haines & Co. show that they received the following lots of cotton: On the 27th Jan'y, '68, 1 b. c. from Sherod Carley, amounting to $37 24; Feb'y 4, '68, 4 bales from W. E. Womack, $184 20; Feb'y 20, '68, 1 bale from Orange Roddy, $40 00; Feb'y 21st, '68, 1 bale from Edward Butler for $80 00; Feb'y 21, '68, 2 bales from A. W. Robertson for $121 76; same date, 2 bales from H. H. Womack for $121 76.

(The relevancy of the above objected to by complainant.)

It is further agreed that the filing of petition of Haines and Chetlain in bankruptcy was on the 24th day of Feb'y, 1868.

140 JOHN P. PENN, a witness of lawful age, being duly sworn on part of plaintiff, deposes, to wit:

I resided in Augusta; have done so for twenty years. I was engaged in business in the month of December, '67 and Jan'y, '68; have been ever since. I held claims against the firm of W. P. Haines & Co. in favor of Penn and Bro. and Hamblet & Penn. I presented those claims for payment several times. I do not recollect the exact number of times. They were presented some time in the fall and winter of '67. The claim in favor of Hamblet and Penn was for merchandise; the one for Penn and Bro. was for land rent. They were only paid in part; the Penn and Bro. claim was paid in cotton, and there was part payment made to Hamblet and Penn in settlement in general merchandise accounts that we had against one another. From the 1st Jan'y, '68, we were paying about 9c. per lb. for cotton; the 10th, about the same; the 20th, 10c.; 1st Feb'y, 10½c.; 15th or middle of Feb'y, 12½c.; 20 Feb'y, 14c.; 10th
141 March, 17c.; April 2d, 21c. We keep a regular cotton ac., and the statements made and prices were the ruling of the market at this place.

JOHN P. PENN.

On this 2d day of March, 1869, the complainant introduced G. D. T. MALONE, the commissioner before whom these depositions are being taken, to me well known to be of lawful age, first being sworn by me, T. E. Erwin, United States commissioner, deposes and says:

I was living during the months of December, 1867, and January, 1868, in White River Township, in the county of Woodruff, in the State of Arkansas. I was an acting justice of the peace at that time, before, and

since. There was judgments rendered against E. M. Shettlesworth in the months of April, May, and June terms of my court, in the year 1867, for from twelve to fourteen hundred dollars, upon which executions were issued in due time according to law, and these executions were
142 returned unsatisfied, nothing being paid upon any of them. There were suits brought against him and judgments obtained from court to court thereafter to the time of filing of his petition in bankruptcy, amounting in all to about eighteen hundred dollars. This is the same E. M. Shettlesworth referred to in Exhibit C on the part of the defence, he being the only E. M. Shettlesworth to my knowledge in the county.

(Objected to by defendants.)

G. D. T. MALONE.
THO'S E. ERWIN,
U. S. Commissioner.

On the part of the defence C. E. CHETLAIN, to me known to be of lawful age, being first duly sworn, deposes and says:

That when I done the shipping—previous to the 24th of December, 1867, when I done the shipping—there was a bill of lading book kept; but during the month of January, 1868, I done no ship-
143 ping, and do not know whether there was a bill of lading book kept or not. It appears from the book that a number of leaves have been removed between the 24th of December, 1867, the last date of W. P. Haines & Co's bill lading in the book, and the 20th of November, 1868, used by H. H. Frisbee. This I ascertained from an inspection of the book.

(Objected to by assignee.)

Cross examination:

I handed the book on yesterday the 1st day of March, 1868, to George Mahan. The next time I saw this book was to-day in court, produced by the defendant. The first I saw of the book since the commencement of the taking of these depositions was in this office previous to that time. I don't think I have seen the book since filing our petition in bankruptcy. On enquiring for this book H. H. Frisbee told me he had this book in his possession.

C. E. CHETLAIN.

144 H. H. FRISBEE recalled:

I found that bill lading book, referred to in the deposition of C. E. Chetlain, in the desk belonging to W. P. Haines, left in my possession before the appointment of assignee. It has been in my possession until yesterday. I believe the book was used as a bill of lading book by W. P. Haines & Co.

Cross-examined:

I believe I did see the book referred to in the business house of W. P. Haines & Co. in the month of January, 1868; am not certain. I think there was another bill of lading book in the house, and know of but one other. The other book to which I refer does not embrace an entry as late as the 24th of December, 1867. I assisted W. P. Haines & Co. in their business house during the entire month of January, 1868, and a short time in February of the same year. W. P. Haines
145 attended to the shipping business. I do not know what he shipped. I don't recollect of his shipping anything except eight bales of

cotton for me. The desk, with the bill of lading book, came into my possession about the first of March. Don't recollect of any other mercantile book being in the desk. I don't think any leaves had been cut out of the book when it came into my possession. I cut some of the leaves out, and think I cut out all that is missing. I cut them out for my own use for shipping. I cut them out at different times. I generally took three at a time. I used them for a single shipment, one to be retained, one for the boat, and one for the consignee.

(Objected to by ass'g.)

Re-examined:

Mr. Chetlain had access to the desk all the time, and the book was kept in the desk until within a few months. I did not cut out
146 any bill of lading filled up by or for W. P. Haines & Co., or anybody else. I cut out none but blanks.

H. H. FRISBEE.

G. D. T. MALONE, *J. P.*

Here the testimony closed.

EXHIBIT I.

$7,403 83. AUGUSTA, *Ark.*, *Jan'y* 18, 1868.

December 1st, after date, I promise to pay to the order of Thomas Hough, seven hundred forty and $\frac{83}{100}$ dollars, balance purchase money lots 1, 2, & 3, in block No. 25, at with interest from date at the rate of ten p'r cent. p'r annum, value received.

No. due.

F. M. MAHAN.

(Indorsed:) Toof, Phillips & Co. Thomas Hough. G. D. T. Malone, J. P.

[U. S. stamp.]

EXHIBIT A.

$3,034 54. AUGUSTA, *Ark.*, *Jan'y 18th*, 1868.

At sight pay to the order of W. P. Haines, three thousand and
147 thirty-four $\frac{54}{100}$ dollars, value received, and charge the same to the account of

F. M. MAHAN.

To TOOF, PHILLIPS & CO., *Memphis, Tenn.*

(Indorsed:) W. P. Haines. C. E. Chetlain. G. D. T. Malone, J. P.

[U. S. stamp.]

EXHIBIT B.

$3,034$\frac{54}{100}$. AUGUSTA, ARK., *Jan'y* 18, 1868.

At sight, pay to the order of C. E. Chetlain three thousand and thirty-four $\frac{54}{100}$ dollars, value received, and charge the same to account of

F. M. MAHAN.

To TOOF, PHILLIPS & CO., *Memphis, Tenn.*

(Indorsed:) C. E. Chetlain. G. D. T. Malone, J. P.

[U. S. stamp.]

EXHIBIT H.

MEMPHIS, TENN., *Feb'y* 22, 1868.

148 DEAR BOYS: You have telegraphed me in regard to the bond, and I have replied to go ahead and fix up that. I would carry out my agreement faithfully. I will execute to you the bonds as agreed, but there is only one way for it to be done. I will have to be in Augusta when it is done; I can't do it here. Don't worry yourselves about my not doing all I have agreed. Do just as I told you, and all will be well. Make the invoice to Boyd as soon as you can, and write our Mr. Mahan. Our Mr. Phillips is in New York to-day. Cotton weakening; ¼ to 1c. lower to-day. Write us.

Your friend,

F. M. MAHAN.

(Indorsed:) This is the letter referred to in my deposition, marked Exhibit H.

C. E. CHETLAIN.

This is the paper referred to in my deposition, marked Exhibit
149 H.

J. M. McCURDY.

G. D. T. MALONE, *J. P.*

EXHIBIT C.

AUGUSTA, ARK., *Feb'y* 25, 1868.

TOOF, PHILLIPS & CO., *Memphis.*

GENTS: We have just got our papers through in bankruptcy. We were compelled to go into it by circumstances. E. M. Shettlesworth is banking. W. A. Campbell banked on us for $1,800, J. D. M. Bryan for $2,000, and many others of smaller amounts. We could not see any other alternative. We scheduled homestead with the whole transaction.

Yours, truly,

W. P. HAINES & CO.

(Endorsed:) C. E. Chetlain. G. D. T. Malone, J. P.

EXHIBIT G.

150 AUGUSTA, ARK., *Nov. 20th*, 1867.

Col. J. H. PATTERSON, *at home.*

DEAR SIR: Mr. John Wickersham spoke to us last week pertaining to the note you hold against us in favor of Messrs. Orgill Bro. & Co. We promised to pay it this week, but will fail to do so. We rode into the country several days since. We made the promise, and, having cotton promised to us, we felt that we could meet all of our papers as fast as they come due; but have since come to the conclusion that the planter will not leave his field as long as there is favorable weather for picking. We have our taxes to pay to Mr. Erwin, which has been due some time. We have received extensions on our paper North until we could meet them. This gives us little ease and the planter time to harvest his crop during good weather, and then can haul it to mar-
151 ket during bad weather. Messrs. Orgill Bro. & Co. being South, should see just the situation of the country merchant, and know

at they must have time this year to pay their debt. We therefore k an extension on the note you hold against us.

Hoping this will meet your approval, we remain, very respectfully,

W. P. HAINES & CO.

Indorsed:) C. E. Chetlain. G. D. T. Malone, J. P.

EXHIBIT E.

AUGUSTA, ARK., *Jan'y* 27, 1868.

Mess. TOOF, PHILLIPS & CO., *Memphis, Tenn.*

GENTS: Inclosed please find statement of account. We have you harged with this amount; please give us credit for the same.

The Bureau dep't was about the same when here last as when your Mr. Mahan was here; has promised to do better next time, as
152 we informed him we was very much dissatisfied.

Boyd is working with all vengeance.

Yours, truly,

W. P. HAINES & CO.

(Indorsed:) C. E. Chetlain. G. D. T. Malone, J. P.

EXHIBIT F.

AUGUSTA, ARK., *Jan'y 24th*, 1868.

Mess. Toof, Phillips & Co., Memphis, Tenn., in acc't with W. P. Haines & Co.:

1867.				
Jan'y 17.	Original bill		476 04	
	M'd'se—corrected bill		474 75	
				$1 29
Sept. 10.	Sight draft, Rowena		24 00	
	Your statem't ac		34	
				10 00
Sept. 14.	M'd'se—orig. bill		590 44	
	Your statem't ac		592 44	
				2 00
" "	Deduct'g rope bagging			20 04
	Dam'g'd rope, 1,800, a 12c			22 50
	Insurance coll'ct'd on bagging & rope			47 00
Jan. 17.	Cash hand F. M. Mahan			10 00
" 22.	5 shirts, by " *a.* 4 00			20 00
24.	Interest			2 48
" 17.	½ interest in storehouse			1,876 84
				$2,002 15

W. P. HAINES & CO

153 (Indorsed:) C. E. Chetlain. G. D. T. Malone, J. P.

EXHIBIT D.

AUGUSTA, ARK., *Jan'y 20th*, 1868.

Mess. TOOF, PHILLIPS & CO., *Memphis, Tenn.*

GENTLEMEN: Inclosed please find sight draft for C. E. Chetlain for $3,034 54; also, draft for W. P. Haines for same amount, which you

will please place to our credit after deducting amount of enclosed bill of goods.

Yours, respectfully,

W. P. HAINES & CO.

(Indorsed:) C. E. Chetlain. G. D. T. Malone, J. P.

Mess. W. P. Haines & Co., Augusta, Ark., in ac. with Toof, Phillips & Co.

1867.			49 07		
June	4.	To m'd'se, per bills	34 21		
				83 28	
"	"	" cash paid selves		20 00	
	18.	" m'd'se, per bills		129 78	
	"	" " " "		13 27	
154	June	18. To m'd'se, per bills		17 89	
		" "		15 11	
		" "		24 17	
		" "		318 04	
		" "		185 97	
	25.	"		111 66	
			504 10		
July	9.	"	259 35		
				763 45	
	22.	" cash p'd d'ft for st'r Rowena		75 00	
	16.	" m'd'se, per bill		474 75	
	23.	"		589 95	
	30.	" cash p'd d'ft for st'r Commercial		125 00	
	"	" m'd'se, per bill		314 51	
Aug.	3.	" cash p'd Heiskell, Scott & Heiskell for drawing deed of trust		10 00	
	6.	" m'd'se, per bill		2 00	
		Difference int's to date		19 64	
		Advancing $230 00 cash, a 2½ p'r c't		5 75	
					3,299 22

CREDIT.

1867.					
July	9.	By deduction on meal		3 50	
	12.	" proceeds 1 b. c., 1,441		40 40	
					43 90
		Ballance due T., P. & Co. on open ac			$3,255 32

MEMPHIS, TENN., *August 6th*, 1867.—E. & O. E.

155 *Mess. W. P. Haines & Co., Augusta, Ark., in ac. with Toof, Phillips & Co.*

1867.			
Aug.	6.	To balance ac. ren'd	3,255 32
	"	cash p'd d'ft favor Commercial	27 75
	"	m'd'se, per bill	322 65
	9.	" cash p'd W. P. Haines	50 00
	10.	" m'd'se, per bill	428 32
	12.	" cash p'd d'ft favor Commercial	29 75
	13.	" m'd'se, per bill	80 61
	17.	" " "	218 56
	20.	" " "	1 00

	24.	To m'd'se, per bill		449 28
	"	" cash p'd d'ft favor Rowena		75 00
	27.	" m'd'se, per bill		20 52
	30.	" " "		353 44
Sept.	3.	" "		5 75
	6.	" cash p'd d'ft for Rowena		40 00
	7.	" m'd'se, per bill		446 97
	14.	" cash p'd d'ft for Rowena		34 00
	18.	" 1 app't for Hammell, Moore & Haskell, p'd Jan'y 4, '68		247 59
	"	" " D. A. Burrows, p'd Jan'y 5, '68		600 00
	14.	" m'd'se, per bill		592 44
	21.	" cash p'd d'ft for Rowena		75 00
	"	" m'd'se, per bill		557 42
	24.	" " "		144 16
	28.	" "		92 24
Oct.	1.	" our ac. for Anthony Cole, p'd Nov. 3, '67		350 00
	"	" cash p'd d'ft for Commercial		207 95
156	Oct.	1. To m'd'se, per bill		207 28
		5. " " "		68 43
		8. " " "		502 73
	12.	" cash p'd d'ft for st'r Rowena		537 25
	"	" m'd'se, per bill		107 30
	15.	" " "		407 69
	19.	" cash p'd d'ft for Rowena		300 00
	"	" m'd'se, per bill		280 14
	22.	" " "		180 12
	31.	" cash p'd d'ft for Commercial		100 00
Nov.	2.	" " Rowena		200 00
	"	" " W. P. Haines		100 00
	1.	" m'd'se, per bill		66 65
	19.	" " "		119 79
	"	" cash p'd d'ft for Commercial		150 00
	21.	" " " C. E. Chetlain		50 00
	23.	" m'd'se, per bill		22 00
	"	" cash p'd for repairing gin, &c		40 00
	27.	" " d'ft for Guidon		150 00
	"	" " " Commercial		50 00
	25.	" m'd'se, per bill		47 65
	27.	" " " "		35 22
	30.	" " " "		51 20
Dec.	4.	" cash p'd d'ft for st'r Commercial		75 00
	"	" " " C. E. Chetlain's bill at Overton Hotel.		18 00
	9.	" " " d'ft for Guidon		250 00
	7.	" m'd'se, per bill		50 74
	10.	" cash p'd d'ft for Commercial		50 00
157	Dec.	10. To m'd'se, per bill		81 36
	14.	" cash p'd d'ft for Guidon		150 00
	26.	" " " " Commercial		200 00
	"	" " Ozark		75 00
	24.	" m'd'se, per bill		25 25
	30.	" cash p'd d'ft for Ozark		30 00
		Difference int. to date, a 10c		339 47
		Advancing 4,269 29 cash, a 2½ p. c		106 55
				$13,930 54

CREDIT.

1867.						
Aug.	1.	By proceeds 1 b. c., 1448, "I M C", July 24, '67				4 91
Sept.	1.	" " 1 gal. whisky.....				2 75
Oct.	8.	" " 2 b. c. 1508, (S. L. Murphy).....				113 99
	12.	" " 8 " 1535, [H. & Co].....				458 77
	19.	" " 2 " 1572, J. B. Dent.....				107 70
	"	" " 1 " 1571, W. H. Cook				67 97
	"	" " 5 " 1570, J. S. Murphy.....				305 93
	"	8 " 1569, H. & Co.....				462 94
Nov.	5.	" 1 " 1632, A. Westmoreland.....				50 75
	"	1 1631, W. S. Wooten				54 21
		4 1634, H. & Co.....				238 55
	21.	" 4 1633, J. B. Dent.....				228 76
	"	1 1749, E. Butler.....				42 65
	"	1 1750, Ned Biscoe				47 50
	"	1 1752, D. Westmoreland				49 02
	"	1 1753, W. S. B				49 19
	27.	" 1 1784, H. & Co.....				45 67
158	Nov.	27. To proceeds 2 " 1781, Nelson Roddy ..				79 48
	"	" 2 1783, C. C. Cherry				95 90
	30.	" 5 1805, H. & Co.....				250 69
	"	2 1782, H. Westmoreland				95 59
Dec.	5.	" 3 1850, H. & Co.....				138 82
	7.	" 2 1630, B H				83 61
	"	6 1630, H. & Co.....				244 99
		8 1682, J. S. Murphy.....				351 80
		2 1861, Fulks & Hurna				77 56
	"	2 1628, W. S. Bell.....				78 97
	"	3 1629, Alex. Roddy.....				128 09
	11.	" 3 1872, "				129 33
	18.	" 6 1898, J. L. Murphy.....				222 70
		2 1897, Geo. Biscoe				84 12
Dec.	23.	1 1951, Ned Biscoe				31 88
		2 1952, H. T. Whittington				89 21
	26.	" 7 1971, J. L. Murphy.....				237 66
'68.						
Jan.	1.	2 1982, Alex. Roddy.....				74 10
		1 1981, Ned Biscoe.....				32 24
	2.	1 1994, J. B. Dent.....				36 25
		1 1993, C. C. Cherry.....				40 72
		1 1992, E Neal.....				42 17

Balance down to you debit, $8,953 40.

1868.

Jan'y 8. To balance down to your debit on ac..... ..... 8,953 40

MEMPHIS, TENN., *Jan'y* 8, 1868.—E. & O. E.

159 *Mess. W. P. Haines & Co., Augusta, Ark., in ac. with Toof, Phillips & Co.*

1868.					
Jan'y	8.	To bal. ac. ren'd	8,953	40	
Feb'y	4.	" cash p'd telegram	3	60	
	5.	" " " "	2	25	
	28.	" " " "	1	85	
Apr.	4.	" " p'd haul'g cotton by Sheriff Augusta	5	00	
June	5.	" " expense of trustee sale	152	56	
	"	" " for advertising sale	3	00	
					9,121 66
1868.		CREDIT.			
Jan'y	11.	By extra fr't on 13 b. c. sunk, 3 00	39	00	
		" cash F. M. Mahan's d'fts	6,069	08	
		" ½ int. in storehouse in Augusta	1,800	00	
June	5.	" proceeds mules, oxen, & wag. sold trustee sale	708	50	
	"	" 2 b. c. p'd for lot	239	66	
	"	" 4 b. c., 1,620 lbs., a 15c	243	00	
					9,099 24
		Balance due T., P. & Co. on open ac			22 42
		To your note dated June 4, '67			3,792 72
		Total balance due T., P. & C			3,815 14

MEMPHIS, TENNESSEE, *July 3d*, 1868.—E. & O. E.

Interest not included in above account.

This is Exhibit A to my deposition.

F. M. MAHAN.

HUME F. HILL, *U. S. Com'r.*

160 This deed, made and executed this 5th day of February, A. D. 1868, between Thomas Hough and Fannie, his wife, of the county of Woodruff, and State of Arkansas, of the first part, and Frank M. Mahan, of the county of Shelby, and State of Tennessee, of the second part, witnesseth, that the parties of the first part, for and in consideration of the sum of seven hundred ($700 00) dollars, to them in hand paid, the receipt of which is hereby acknowledged, have this day granted, bargained, and sold, and by these presents do grant, bargain, and sell, and convey, to him, the said Frank M. Mahan, his heirs and assigns, forever, the following lots in the town of Augusta, viz: Lots numbered one, (1,) two, (2,) and three, (3,) in block number twenty-five, (25,) said lots fronting on Broadway and Front streets, and intersecting lot number four (4) on the east, and lot number fourteen (14) on the north in same block, all of which will more fully appear by refer-
161 ence to the plat of said town; to have and to hold the same, with all the hereditaments, improvements, privileges, or appurtenances thereunto belonging, or in any wise appertaining, to him the said Frank M. Mahan, his heirs and assigns, forever; and the parties of the first part do hereby warrant and defend the right and title of the same to the said Frank M. Mahan, his heirs and assigns, forever, against the lawful claims or demands of all parties whomsoever.

In testimony whereof the parties of the first part have hereunto set their hands and affixed their seals this the day and date first above written.

THOMAS HOUGH. [SEAL.]
FANNIE HOUGH. [SEAL.]

[T. H. F. H. Feb'y 26, 1868. $1 00 rev. st'p.]

STATE OF ARKANSAS, *County of Woodruff:*

Be it remembered that on this 26th day of February, A. D.
162 1868, before the undersigned personally came Thomas Hough, grantor in the foregoing deed of conveyance, and acknowledged that he had executed the same for the uses, purposes, and consideration therein set forth, and desired the same certified, which is accordingly done.

Given under my hand and official seal, as an acting and duly commissioned clerk of the circuit court within and for the county and State aforesaid, this the 26th day of February, A. D. 1868.

W. P. CAMPBELL, *Clerk.*

SPRING RIDGE,
Hinds County, Mississippi, Feb'y 5th, 1868.

To the magistrate before whom the acknowledgment of this deed in favor of F. M. Mahan is made:

This is to certify I have signed the same and wish my acknowledgment to the same certified to by you as though I were personally present.

FANNIE HOUGH.

163 STATE OF ARKANSAS, *Woodruff County:*

I, W'm P. Campbell, clerk of the circuit court and ex officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 26th day of February, A. D. 1868, at 4 o'clock p. m., and the same is now duly recorded in record book B, pages 220, 221.

In testimony whereof I have hereto set my hand and affixed the seal of said court on this 27th day of February, 1868.

[L. S.]

W. P. CAMPBELL,
Clerk & ex officio Recorder,
By F. G. BOYD, *D. C.*

This is Exhibit B to my deposition.

F. M. MAHAN.

HUME F. HILL, *U. S. Com'r.*

Filed in my office Feb'y 26th, 4 o'c'k p. m., 1868.

W. P. CAMPBELL, *Clerk.*

164 740\frac{83}{100}$ AUGUSTA, ARK., *Jan'y* 18, 1868.

December 1st, after date I promise to pay to the order of Thomas Hough seven hundred forty and $\frac{83}{100}$ dollars, balance purchase money lots 1, 2, 3, in block No. 25, with interest from date at the rate of ten per cent. per annum, value received.

F. M. MAHAN.

[Rev. stamp 40c. F. M. M., Jan'y 18, '68.]

(Indorsed:) Paid. Exhibit I, Toof, Philips & Co.

This is Exhibit C to my deposition.

F. M. MAHAN.

HUME F. HILL, *U. S. Com'r.*

AUGUSTA, ARK., *January* 20, 1868.

Mess. TOOF, PHILLIPS & CO., *Memphis, Tenn.:*

GENTLEMEN: Enclosed please find sight draft for C. E. Chet-
165 lain for $3,034 54; also, draft for W. P. Haines for same amount, which you will please place to our credit, after deducting amount of inclosed bill of goods.

Yours, respectfully,

W. P. HAINES & CO.

This is Exhibit D to my deposition.

F. M. MAHAN.

HUME F. HILL, *U. S. Com'r.*

$3,034 54. AUGUSTA, ARK., *Jan'y* 18, '68.

At sight pay to the order of C. E. Chetlain three thousand and thirty-four $\frac{54}{100}$ dollars, value received, and charge the same to account of

F. M. MAHAN.

To Mess. TOOF, PHILLIPS & Co., *Memphis, Tenn.*

(Indorsed:) Paid Jan'y 25, '68. Ent. D. B. 183. C. E. Chetlain.

This is Exhibit E to my deposition.

F. M. MAHAN.

HUME F. HILL, *U. S. Com'r.*

[2c., Jan'y 18, '68. F. M. M.]

166 $3,034 54. AUGUSTA, ARK., *Jan'y* 18, 1868.

At sight pay to the order of W'm P. Haines, three thousand and thirty-four $\frac{54}{100}$ dollars, value received, and charge the same to account of

F. M. MAHAN.

To TOOF, PHILLIPS & Co., *Memphis, Tenn.*

(Endorsed:) Ent. D. B. 182. W. P. Haines.

This is Exhibit F to my deposition.

F. M. MAHAN.

HUME F. HILL, *U. S. Com'r.*

THE WESTERN UNION TELEGRAPH COMPANY.

Dated Augusta, Ark., 19, 1868. Received Memphis, Feb'y 19.

To F. MAHAN, *care Toof, Phillips & Co.:*

Send, first boat, bond for deed on house, payable two (2) years. Answer.

W. P. HAINES & CO.

12, G., 1 43, paid.

This is Exhibit G to my deposition.

F. M. MAHAN.

HUME F. HILL, *U. S. Com'r.*

167 Feb'y 17, W. P Haines.

THE WESTERN UNION TELEGRAPH COMPANY.

Dated Augusta, 20, 1868. Received at Memphis, Feb'y 20.

To F. MAHAN, *care Toof, Phillips & Co.:*

You promised bond for deed two (2) years. Will you send on Liberty Saturday?

W. P. HAINES & CO.

W. P. Haines, Feb'y 20.

13, H. Collect 1 52.

This is Exhibit H to my deposition.

F. M. MAHAN.

HUME F. HILL, *U. S. Com'r.*

This deed of conveyance, made and entered into this 18th day of January, A. D. 1868, by and between William P. Haines and Charles E. Chetlain, by the firm name and style of W. P. Haines & Co., of the city of Augusta, of the first part, and Toof, Phillips & Co., of the city
168 of Memphis, Tenn., of the second part, witnesseth that the parties of the first part have this day, for and in consideration of the sum of eighteen hundred seventy-six $\frac{84}{100}$ dollars to them in hand paid by the parties of the second part, the receipt of which is hereby acknowledged, bargained and sold, and by these presents do bargain and sell, to the parties of the second part, their undivided one-half interest in the following described lot of ground, with the tenements thereon, lying and being situate in the city of Augusta, in Woodruff County, Arkansas, viz: Beginning at the northeast corner of lot numbered one, (1,) in block No. nine, (9), on the south side of Main street; thence running south on the line dividing lots one (1) and two (2) of said block from lots numbered eleven (11) and twelve (12) of these same blocks to the southeast corner of lot number two, (2;) thence running due east
169 twenty-five (25) feet on the line dividing lots numbered ten (10) and eleven in said block; thence running due north one hundred (100) feet to Main street; thence running due west to the place of beginning, or, as described in the original survey of the city of Augusta, twenty-five (25) feet off the west end of lots numbered eleven (11) and twelve (12) in said block, No. nine, (9,) including the storehouse now occupied by W. P. Haines & Co.;

To have and to hold the aforesaid granted premises to the parties of the second part, their heirs and assigns, forever. And the parties of the first part hereby covenant to defend the title to the aforesaid granted interest in said lot of ground, with the privileges and appurtenances thereto belonging, to the parties of the second part, their heirs and assigns, against the lawful claims of all persons whomsoever.

Witness the firm signature of the aforesaid parties of the first
170 part this day and year above written.

Interlined before signed.

W. P. HAINES & CO. [SEAL.]

[2 00 stamp. W. P. H. & Co. Jan'y 18, '68.]

STATE OF ARKANSAS, *County of Woodruff:*

This day personally appeared before me, W'm P. Campbell, clerk of the circuit court of and for said county of Woodruff, William P. Haines

& Charles E. Chetland, members of the firm of W. P. Haines & Co., whose firm name is subscribed to the foregoing deed of conveyance as parties grantor, and they acknowledged to me that they executed and delivered the foregoing deed for the consideration and purposes therein set forth, and I do so certify.

Witness my official signature and the seal of said court at office, this 18th day of January, 1868.

[L. S.] W. P. CAMPBELL,
Clerk.

171 STATE OF ARKANSAS,
Woodruff County:

I, W'm P. Campbell, clerk of the circuit court and ex officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 18th day of January, A. D. 1868, and the same is now duly recorded in record deeds, book B, pages 147 and 148.

In testimony whereof I have hereunto set my hand and affixed the seal of said court on this the 18th day of January, 1868.

[L. S.] W. P. CAMPBELL,
Clerk and ex officio Recorder,
By F. G. BOYD, *D. C.*

This is Exhibit I to my deposition.

F. M. MAHAN.

Filed January 18th, 1868.

W. P. CAMPBELL,
Clerk.

172 *Trustees' sale.*

By virtue of a deed of trust executed by W. P. Haines & Co., of Augusta, Ark., to Toof, Phillips & Co., of Memphis, Tenn., on the 4th day of June, A. D. 1867, and duly recorded in the recorder's office in Woodruff County, Ark., in Mortgage Record Book "A," pages 144, 145, and 146, we will sell at public outcry, to the highest bidder, for cash in hand, at the court-house door, in the city of Augusta, and State of Arkansas, on Tuesday, the 21st day of April, A. D. 1868, between the hours of ten a. m. and three p. m. of same day, the following described property, to satisfy said trust, viz., seven bales of cotton, nine mules, six work oxen, and one wagon.

F. M. MAHAN,
J. M. McCURDY,
Trustees.

173 For the purpose of securing to John S. Toof, Charles J. Phillips, and F. M. Mahan, partners, trading under the firm name and style of Toof, Phillips & Co., three thousand nine hundred and ninety-two $\frac{72}{100}$ dollars, due one day after date hereof by note, and for the further purpose of securing to the said Toof, Phillips & Co. the payment for all supplies to be furnished to us by the said Toof, Phillips & Co. during the year 1867, in an amount not to exceed ($20,000) twenty thousand dollars, but is also to secure any less amount, we, W. P. Haines and Charles E. Chetlain, partners, trading under the firm name and style of W. P. Haines & Co., both of Woodruff County, Arkansas, hereby convey to F. M. Mahan, of Memphis, Tenn., and J. M. McCurdy,

of Woodruff County, Arkansas, in trust, the following property, to wit, all the crop of cotton now growing on the farm cultivated by us in Woodruff County, Arkansas, known as the Wooley farm, also (9) nine mules, (6) six work oxen, and (1) one wagon; and we hereby bind ourselves
174 to ship to said Toof, Phillips & Co., at Memphis, Tenn., all the above-named crop of cotton as soon as practicable after the same is picked, ginned, and baled, and when the said cotton is sold by the said Toof, Phillips & Co., the said F. M. Mahan is to reserve out of the proceeds an amount sufficient to satisfy this trust and pay over to us or our order the residue; and we also bind ourselves to ship to the said Toof, Phillips & Co. all cottons which we can control during the year 1867, as soon as practicable after the same comes into our control, it being ginned and baled before shipment to the said Toof, Phillips & Co.

And if the said indebtedness is not paid by the first day of January, 1868, then the said trustees, or either of them, are authorized to sell all or any part of the property herein conveyed, or a sufficient part thereof to pay the debt, upon giving thirty days' notice of the time, place,
175 and terms of sale, the said sale to be at public outcry to the highest bidder for cash, and the notice thereof to be put in some newspaper published in Memphis for four consecutive weeks before said sale; and they are further authorized to execute deeds or bills of sale to the purchasers to pay off the debt herein secured, with interest and expenses, and hold the remainder subject to our order.

And if at any time before the first day of January, 1868, it becomes necessary for the faithful discharge of this trust that the said trustees, or either of them, should take charge of and dispose of the above-named property, or any part thereof, they, or either of them, are authorized to take charge of the same and dispose of the same in the manner and for the purposes above set forth.

Witness our hands and seals this 4th day of June, 1867.

The interlineation on the ninth and tenth lines from the top of
176 this deed, and also the interlineation of "the debt" over the thirteenth line from the bottom of this deed, the said first interlineation being "in an amount not to exceed ($20,000) twenty thousand dollars, but is also to secure any less amount," were inserted before the signing of this deed.

W. P. HAINES. [SEAL.]
CHA'S E. CHETLAIN. [SEAL.]

[$20 rev. st'p. W. P. H. & Co., June 2, 1867.]

STATE OF ARKANSAS, *County of Woodruff:*

Personally appeared before me, W. P. Campbell, clerk of the circuit court in and for the county and State aforesaid, W. P. Haines and C. E. Chetlain, who are to me well known to be the persons whose names are subscribed to the foregoing conveyance as party grantors, and acknowledged to me that they executed and delivered the same for the consideration therein set forth, and I do so certify.

177 Witness my hand and the seal of said court this 21st day of June, A. D. 1867.

[L. S.] W. P. CAMPBELL, *Clerk*,
By GEORGE K. HEBLER, *D. C.*

STATE OF ARKANSAS, *Woodruff County, ss:*

I, W'm P. Campbell, clerk of the circuit court and ex officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 21st day of June, A. D. 1867, and the same is now duly recorded in Mortgage Book "A," page 144, 145, & 146.

In testimony whereof I have hereunto set my hand and affixed the seal of said court on this 21st day of June, 1867.

[L. S.] W. P. CAMPBELL,
Clerk and Ex-officio Recorder,
By GEO. K. HEBLER, *D. C.*

This is Exhibit J to my deposition.

178 F. M. MAHAN.

HUME F. HILL, *U. S. Com'r.*

Filed June 21st, 1867.

W. P. CAMPBELL, *Clerk,*
By GEO. K. HEBLER, *D. C.*

AUGUSTA, ARK., *Feb'y* 25, 1868.

TOOF, PHILLIPS & CO., *Memphis.*

GENTS: We have just got our papers through in bankruptcy. We were compelled to go into it by circumstances. E. M. Shettlesworth is banking. W. A. Campbell banked on us for $1,800; J. D. M. Ryan, for $2,000; and many others of smaller amounts. We could not see any other alternative. We scheduled homestead with the whole transaction.

Yours, truly,

W. P. HAINES & CO.

This is Exhibit K to my deposition.

F. M. MAHAN.

HUME F. HILL, *U. S. Com'r.*

179 AUGUSTA, ARK., *January* 24, 1868.

Messrs. Toof, Phillips & Co., Memphis, Tenn., in ac. with W. P. Haines & Co.

1867.			
	Original bill	476 54	
Jan. 17.	M'd'se corrected bill	$474 75	
			1 29
Sept. 10.	Sight d'ft, Rowena	24 00	
	Your statem't ac	34 00	
			10 00
Sept. 14.	M'd'se, original bill	590 44	
	Your stated ac	592 44	
			2 00
	Deduction on rope & bagging		20 04
	Dam'g. rope, 180 lbs., *a* 12½		22 50
	Insurance coll't'd on bag. & rope		47 00
Jan'y 17.	Cash hand, F. M. Mahan		10 00
22.	5 shirts by " 4 00		20 00
24.	Interest		2 48
	Carried forward		$125 31

Am't bro'ght forward	125 31
Jan'y 17. ½ interest in storehouse	1,876 84
	2,002 15

W. P. HAINES & CO.

This is Exhibit L to my deposition.

F. M. MAHAN.

HUME F. HILL, *U. S. Com'r.*

180 AUGUSTA, ARK., *Jan'y* 27, 1868.

Mess. TOOF, PHILLIPS, & CO., *Memphis, Tenn.*

GENTS: Enclosed please find statement of account. We have you charged with this amount; please give us credit for the same.

The Bureau dep't was about the same when here last as when your Mr. Mahan was here; has promised to do better next time, as we informed him we was very much dissatisfied. Boyd is working with all vengeance.

Yours, truly,

W. P. HAINES & CO.

This is Exhibit M to my deposition.

F. M. MAHAN.

HUME F. HILL, *U. S. Com'r.*

Depositions of witnesses taken and subscribed before me, Hume
181 F. Hill, commissioner of the United States district court, district West Tenn., duly appointed and commissioned, city of Memphis, on the fifteenth day of March, A. D. 1869, between the hours of 9 a. m. and 5 p. m. of said day, at counting-room of Toof, Phillips & Co., in the city of Memphis, in the county of Shelby, in the State of Tennessee, in pursuance of a commission hereto annexed and to be read as evidence in a certain cause now depending in the district court of the United States, eastern district of, in the State of Arkansas, wherein Rufus W. Martin, assignee of W. P. Haines and Co., is plaintiff, and Toof, Phillips & Co. are defendants, on the part of the defendants.

F. M. MAHAN, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matter in controversy in suit aforesaid, did then
182 and there, on his oath aforesaid, depose as follows, to wit:

Question 1st by defendants. What is your name and occupation?

Frank M. Mahan; a merchant in Memphis.

The witness being sick I am unable to complete the taking of these depositions on this day; the same is adjourned until to-morrow, the 16th March, to be continued at the same place and between the hours mentioned in the caption.

HUME F. HILL,
U. S. Com'r.

MARCH 16, 1869—9 *o'clock a. m.*

Deposition of F. M. Mahan resumed.

Question 2d. If you are a member of any firm please state its style,

the name of its members, where it does business, and the nature of its business.

Answer. I am a member of the firm of Toof, Phillips & Co., composed of John S. Toof, Cha's J. Phillips, and myself, doing business as wholesale grocers and commission merchants, in Memphis, Tenn.

183 Question 3d. Were you acquainted with the firm of W. P. Haines & Co., lately doing business in Augusta, Ark? If yea, state who composed that firm.

Answer. I was acquainted with the firm of W. P. Haines & Co., late of Augusta, Arkansas. The firm was composed of W. P. Haines and C. E. Chetlain.

Question 4. If the firm of W. P. Haines & Co. ever had any dealings with Toof, Phillips & Co., please append as an exhibit to your deposition marked A, and signed with your name, a copy of the account of W. P. Haines & Co. as it appears upon the books of Toof, Phillips & Co.

Answer. W. P. Haines & Co. done business with Toof, Phillips & Co. some three years before their going into bankruptcy, and up to within a few days of their filing their petition in bankruptcy, and

184 the account hereto attached, and marked Exhibit A, to my deposition, is a true copy of their account as appears on the books of Toof, Phillips & Co., from June, A. D. 1867, at which time a settlement was made and the ac., closed by note.

Question 5. If you ever purchase any property, such as real estate, from the firm of W. P. Haines & Co., or from either member of that firm, please make a full statement of the whole transaction.

Answer. During December, 1867, and January, 1868, I was travelling, making collections for our house. On or about the 16th of January, 1868, I arrived at Augusta, Ark. I went there to see W. P. Haines & Co., and other debtors of my firm, for the purpose of collecting moneys and obtaining orders for merchandise. I found W. P. Haines & Co. unable to make me a cash payment on ac., but they had cotton on hand and were receiving more daily, which they promised to ship

185 forward to us as fast as it came in; with this promise I was satisfied, and finding their business to be in a healthy condition, as I believed from a thorough examination of their books, I took a large order from them for goods to be shipped them on or about the 1st of February, 1868; also, a small order to be shipped as soon as I reached home. While I was finishing up my other matters, W. P. Haines came to me and proposed selling me his dwelling-house, which, after considerable examination, I purchased. After I purchased Haines' house, C. E. Chetlain offered me his house at the same price, stating that they could use the money more profitably in their business. I bought the property as an investment for myself, and paid them in my sight draft on Toof, Phillips & Co. for the cash. I gave each one my sight draft for $3,034 $\frac{54}{100}$, for his equitable interest in lots No. 1, 2, and 3, in block No. 25, in the city of Augusta, and the improvements thereon. They

186 held said lots by verbal contract with Ward Boyd, who had contracted to purchase them from Thomas Hough, and said Boyd holding Hough's bond for title and owing Hough the purchase money. By some transaction between the parties, of the particulars of which I was not advised, Hough held a note signed by W'm P. Haines & Cha's E. Chetlain, which they told me was for the purchase money of said lots, and which had been substituted for Boyd's obligation to pay the purchase money. I took up said note and gave Hough my own note for $740 83, payable December 1, 1868. I paid the note shortly after-

wards, and before it was due, for the purpose of stoping interest, and on the 5th day of February, 1868, Tho's Hough conveyed said lots, by warrantee deed, to me. The original deed is herewith exhibited, marked Exhibit B, to my deposition. I also exhibit the note I gave and afterwards paid to Tho's Hough, marked Exhibit C, to my deposition.

187 I purchased this property because I believed it to be a good investment, as the property was the most desirable in Augusta. I paid for it in my sight drafts on Toof, Phillips & Co. for the cash. After I returned home I found that the drafts had been enclosed to Toof, Phillips & Co., by W. P. Haines & Co., and requesting T., P. & Co. to credit their account with the amount of the drafts; said drafts were paid and charged to my account. I herewith exhibit the letter of W. P. Haines & Co., enclosing said drafts, and the drafts themselves, respectively marked Exhibit D, E, & F, to my deposition. After the purchase was completed and my drafts were given, I went with Mr. Chetlain to dinner at his residence; while sitting at the table Mrs. Chetlain said she hated to part with the house, and asked what I would take for it when her ship came in from India. I remarked that I would sell it to her or any one else for ten per cent. advance on my in-

188 vestment. The next day, and just before the boat left Augusta on which I had taken passage, Mr. Chetlain came to me and asked me if I was in earnest about selling the house I had bought from him at 10 per cent. advance on my investment. I told him I was. He asked me if I would give him my bond to that effect. I told Mr. Chetlain that if he would pay me the $300 00 a year rent agreed upon, promptly, and ten per cent. advance on my investment, I would resell to him, and had no objection to giving him a bond to that effect. Mr. Chetlain had before then agreed to pay me $300 00 a year rent for the house. I did not have time to make the bond then, the boat being nearly ready to start. Mr. Chetlain did not obligate himself to repurchase, nor did he in any manner obligate himself to repay me the purchase money or any part thereof. I did not then, nor do I now, consider Mr. Chetlain

189 indebted to me for one dollar of this purchase money. I made no such an agreement with W. P. Haines. Afterward I received the two dispatches herewith exhibited, and marked, respectively, Exhibits G and H, to my deposition. Although I had made no such an agreement with Haines as I had with Chetlain, still I would have done so had he asked it, and was willing to do so then. Consequently, in my letters; I treated it as though it had been made with both parties. I am willing to-day to sell the property to either of them, or anybody else, on the same terms.

Not being able to complete the taking of these depositions for want of time, I adjourn the further taking of the same until to-morrow, then to be continued at the same place and between the same hours mentioned in the said notice.

HUME F. HILL,
U. S. Com'r.

MARCH 17, 1869—9 *o'clock a. m.*

190 The deposition of F. M. Mahan resumed.

There was not one word said about the drafts given by me in payment for the purchase of the property bought by me being credited to the account of W. P. Haines & Co., by Toof, Phillips & Co., at the time, or before it was made. After I had bought the property Chetlain and Haines both told me that they would send the drafts to Toof, Phil-

lips & Co., and have the credited to the ac. of W. P. Haines & Co., and on the 20th of January, 1868, they wrote Toof, Phillips & Co., enclosing said drafts, as is evidenced by their letter of that date, herewith attached, and marked Exhibit D, to my deposition. After I had bought the dwelling-houses, W. P. Haines & Co., who owned one-half interest in the storehouse they then occupied, offered to sell that to me also, which I refused, but afterward bought for Toof, Phillips & Co., which was to be credited to W. P. Haines & Co.'s account. They owed Toof, Phillips & Co. more than the amount of the purchase money. This
191 credit strengthened their account with Toof, Phillips & Co., and gave them the privilege of buying larger amounts of goods on time from Toof, Phillips & Co. They agreed to pay $250 rent to Toof, Phillips & Co. per year, for their half interest. This purchase was made at the request of W. P. Haines & Co., as they stated that they could use the money at a better advantage in their business, and as we were anxious to accommodate them all we could, as they were good customers of Toof, Phillips & Co., and as the price they offered the property at was a reasonable one, and as I thought it a safe investment, I bought it for Toof, Phillips & Co. I refer to deed, herewith attached and marked Exhibit I, to my deposition, for price and description of property. At the same time W. P. Haines & Co. promised to ship us all the cotton they controlled, by reason of advances to planters by them, in addition to the cotton grown by themselves; and this promise is one of the promises alluded to in my letters to them afterwards.
192 I agreed at the same time to continue selling them goods on the usual terms, same as we had been doing before, and we continued to do business with them as usual, until some time in the following month I was in New Orleans and found that they were shipping cotton there to other parties, and ordering the proceeds to Galena, Ill's. I caused the cotton to be attached, and telegraphed to Toof, Phillips & Co. here to cease business with W. P. Haines & Co. After I returned to Memphis W. P. Haines came over to see us about the cotton attached in New Orleans, and upon his promise to ship no more cotton to New Orleans, but would send every bale to us at Memphis, as they had previously agreed to do in accordance with the deed of trust dated June 4th, 1867, herewith exhibited and marked J, to my deposition, we released the attachment and allowed the proceeds to be paid to them. This was about the 15th of Feb'y, 1868. At this time we had no
193 intimation that they contemplated bankruptcy, or we would not have released the cotton. The first intimation we had that they contemplated bankruptcy was the reception of their letter dated Augusta, Ark., Feb'y 25th, 1868, herewith exhibited and marked Exhibit K, to my deposition. W. P. Haines & Co.'s credit was good with Toof, Phillips & Co. up to this day. I saw that they were acting in bad faith with us in shipping cotton to New Orleans. I have kept the property I bought insured since I have owned it. I am in possession of the property, and have it under rent. Toof, Phillips & Co. have possession of the property purchased by them from W. P. Haines & Co., and have the same insured and under rent. Both of these purchase were absolute and made in perfect good faith, without intent to defraud any one.

Question 6. In your answer to 5th question you state that from
194 examination of the books you believed the business of W. P. Haines & Co. to be in a healthy condition. Please state whether or not you made a careful examination, and what was the amount of the assets and liabilities of that firm as they appeared upon ther books, and the date of the examination.

Answer. I did make a careful examination of their books and of a balance-sheet shown me by them. Their books showed assets to the amount of $37,000 and over, not including their partnership and individual real estate, which consisted of the property purchased by me and Toof, Phillips & Co., and other lands in Iowa, as they told me. Their liabilities were within a fraction of $21,000; I know that they did not amount to $22,000. I made the examination of their books while I was in Augusta, at the time I purchased the property.

Question 7. Were you acquainted with the general condition of the country in January, 1868? If yea, please state it, and state the
195 general condition of merchants and planters, and causes, as well as you know them.

Answer. The county was very much depressed during the months of Dec., 1867, and Jan'y, 1868, on account of the extreme low price of cotton, and country merchants were generally hard pressed and could not make their collections promptly on account of planters holding back their cotton on account of low prices. Knowing this, I was satisfied that W. P. Haines & Co. were abundantly able to pay all their debts. All they wanted was time to make their collections. We were willing not only to extend them time, but felt perfectly safe in selling them more goods.

Question 8. If you have any information as to the disposition that the assignee in bankruptcy of Haines & Co. has made of the lands in Iowa, referred to above, please state all you know in regard to it.
196 Answer. On the 24th of February, 1869, I had a conversation with Rufus W. Martin, assignee of W. P. Haines & Co., in Augusta, Arkansas. I asked him what had been done with the Iowa lands spoken of above. He stated that he had advertised and sold them. I asked him who bought the land. He said a Mr. Davis. I then asked what price the lands brought. Martin replied that the whole 160 acres brought ($12 50) twelve dollars and fifty cents for the lot. I then asked him what was Mr. Davis's given name. Mr. Martin replied, he did not know his first name. I then asked Martin how he could make Davis a deed without knowing his first name. He said he did not make the deed to Davis. I then asked Martin who the deed was made to. Martin said he had made the deed conveying the lands to C. E. Chetlain, for $12 50 for the whole tract of 160 acres. I then remarked to Mr. Martin that my brother, Mr. George G. Mahan, was acquainted with
197 character of the Iowa lands, and had left a bid with him (Martin) of three dollars per acre. Mr. Martin remarked that George G. Mahan did not leave a bid of $3 00 per acre, but had left a bid for $250 00 for the tract, but that he had forgotten it at the sale.

Question 9. What caused the discrepancy between the deed of W. P. Haines & Co. to Toof, Phillips & Co., in which the consideration for the store-house and lot appears to have been $1,876 84, while upon the books of Toof, Phillips & Co. they appear to be credited upon this account with only $1,800?

Answer. It was simply an error or oversight of our book-keeper, and W. P. Haines & Co. are entitled to a credit of $76 84 balance on the purchase.

Question 10. When was this error first brought to your notice, and why was it not corrected at the time?
198 Answer. When we received the letter and account herewith exhibited, and marked, respectively, L and M to my deposition, and was not corrected then because they claimed credits to which we did not consider them entitled, and we wished to settle the whole matter of

credits alluded to at one time and waited in order to see them about it; since then it has been neglected.

Cross-interrogatories filed by complainant:

Question 1. State if you did not protest Haines & Chetlain's drafts during the months of November and December, 1867, and January, 1868.

Answer. No legitimate draft of Haines or Chetlain was protested by us during the months above named. I do not remember of any draft being presented during those months except what was paid. I know no legitimate draft was presented without being paid during the above-named months. And further deponent saith not.

199 F. M. MAHAN.

Sworn to and subscribed before me March 17th, 1869.

And on this 17 March, 1869, at the office of Toof, Phillips & Co., the defendants, I have caused to come before me GEORGE G. MAHAN, a witness known to me to be of lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

Question 1. Please state your name, age, residence, and occupation.

Answer. My name is G. G. Mahan; 44 years old; I reside in Memphis, Tenn.; and now, and have been for the last twelve months or more, employed as travelling agent for Toof, Phillips & Co.

200 Question 2. Are you acquainted with the parties to this suit, to wit, Toof, Phillips & Co., and Rufus W. Martin, assignee of W. P. Haines & Co?

Answer. I am.

Question 3. Are you acquainted with W. P. Haines or C. E. Chetlain, or either and which of them?

Ans. I know both of them.

Question 4. If you ever had any conversation with either of them relative to their transactions with Toof, Phillips & Co., and with F. M. Mahan, state when such conversation occurred and what was said.

Answer. Early in March, 1868, I went to Augusta, Ark., to look after the interest of Toof, Phillips & Co. On my arrival there I found it necessary to go on immediately to Jacksonport. I met W. P. Haines and had a talk with him in relation to cotton, stock, &c. held by them, and on which Toof, Phillips & Co. had a deed of trust. He promised me to assist

201 me all he could in closing up the trust; said he had two bales of cotton for us in J. M. McCurdy's warehouse and some 4 or 5 bales on the farm they were cultivating. He promised to have them baled and delivered in the warehouse by the time I returned from Jacksonport. He also promised to take good care of the stock and have it ready at any time we wanted to sell. He seemed perfectly satisfied with his transactions with Toof, Phillips & Co., also with F. M. Mahan; did not refer to any unpleasantness or dissatisfaction or misunderstanding, and I left there satisfied that I would not have any trouble in closing the deed of trust. C. E. Chetlain was present during this conversation. On my return from Jacksonport, some ten days or two weeks later, I met W. P. Haines at the landing in Augusta, with his trunks, ready to leave on the boat for Illinois. I asked him if he had the cotton ready for me to ship. I do not remember the exact words he used, but it was in substance

202 that he did not know or care anything about it, that it might all go to the devil. I found that he was drunk, and did not ask him

any more questions. He left on the boat and I have not seen him since. I saw C. E. Chetlain soon after this and told him what Haines said and how he met me. He replied that Billy had been acting badly for some time, had been drinking and making a d—— fool of himself, and that their business had suffered in consequence; that Billy was dissatisfied and determined to leave the country. I had a long talk with Chetlain in relation to the sales to Toof, Phillips & Co. and F. M. Mahan. He stated in the conversation that the sales were made in good faith and that they expected at that time to continue in business, and felt that they were abundantly able to pay all their debts, and that they
203 would have gone through had it not been that many of their debtors banked on them the last of January and 1st of Feb'y, 1868, and that the agent of the Freedman's Bureau had swindled them out of some six or eight thousand dollars about the same time. I have had repeated conversations with him since, and as late as the first of this month, and in each of them he has stated that the transactions were bona fide, and that at the time they were made he believed W. P. Haines & Co. were solvent, and that their condition financially was much better after the sales to Toof, Phillips & Co. and F. M. Mahan than before.

Question 5. If you have had any further conversation with the parties, Haines & Chetlain, the assignee, or other parties interested, and have ascertained anything further in regard to their transactions or of the transactions of the assignee since the assignment, please make
204 a full and detailed statement of all you know in regard to all such matters.

Answer. I have had repeated conversations with C. E. Chetlain, H. H. Frisbee, (his confidential friend and adviser,) and R. W. Martin, the assignee. I was in Augusta last fall when the assignee was about selling the assets of W'm P. Haines & Co. He urged me to remain and attend the sale. I remarked to him that I did not wish to bid on anything except the 160 acres of land in Iowa, which he informed me would not be sold at that time. We had a quite a lengthy conversation in relation to the land, as to location, value, &c. I informed Mr. Martin that the land was quite valuable, and that I should like to buy it on speculation, and requested him to notify me as to time and place of sale. He asked me what I would be willing to give for it. I replied that I wanted to buy as cheap as possible; was in hopes I could get the 160 acres for two hundred and fifty dollars; but that I would not let it be sold
205 for less than three dollars per acre. Mr. Martin then promised me that he would notify me as to time and place of sale, and if I could not attend he would get some one to bid for me; and if my bid was the highest he would telegraph to me, so that I could send the money and get deed. I was in Augusta again the last of December, 1868, when we talked over the subject again, and he, Martin, assured me that he would let me know the time and place of sale, and would get some one to represent me if I could not be present. Martin stated that he would advertise the sale in the Little Rock Republican; but, for fear I would not see it, that he would write to me as soon as he decided the time and place of sale. I went to Augusta in Feb'y, '69, as agent of Toof, Phillips & Co., to assist in taking depositions in the case of
206 R. W. Martin, assignee, vs. Toof, Phillips & Co. While there I made a partial or hurried examination of the books of W. P. Haines & Co., and a careful examination of Haines & Co. account on the books of J. M. McCurdy. I found that McCurdy's books show entries on account of W. P. Haines & Co. regularly through Jan. and up to Feb'y 25, '68, when the account was closed by cash in full of W. P. Haines & Co.

In examining the books of W. P. Haines & Co. everything appeared to be kept in good style and proper order up to the last of Jan'y, '68, except the bill of lading book, which I will refer to hereafter. It appeared from their books that they had received on account on Jan. 20th, '68, from H. H. Frisbee, 2 bales cotton, $41 87; W. C. W., 1 b. c., $22 61; W. Niblet, 1 bale c., $33 81; Jan. 27, '68, from Cerode Caly, 1 bale cotton, $31 24; Feb'y 4, '68, from W. E. Womack, 4 b. c., 1,842 lbs., *a* 10, $184 20; Feb'y 20, '68, from O. & N. Roddy, 1 b. c., $40 00; Feb'y 21st, '68, from Ed. Butler, 1 b. c., $80 00; A. W. Robertson, 2 b. c., $121 76;
W. H. Womack, 2 b. c., 121 26. I also found on examining the
207 books of W. P. Haines & Co. that they had bought three horses
the latter part of Jan. or 1st of Feb'y, 1868. Their books do not show what disposition was made of the above-described cotton or horses. I have also examined the schedule in bankruptcy of W. P. Haines and C. E. Chetlain on file in Little Rock, and find that the above-described cotton and horses are not mentioned in same. I found that the last of January, '68, (I think,) that books show that W. P. Haines was credited with ½ interest in lots 1, 2, & 3 in block 25, $3,034 54, and C. E. Chetlain had some kind of credit, and for same amount. Toof, Phillips & Co. were charged at the same time $6,069 08 for F. M. Mahan's two drafts, one in favor of C. E. Chetlain and the other in favor of W. P. Haines. The same books show that about the middle of Feb'y, '68, W. P. Haines was charged back with ½ interest in lots 1, 2, & 3 in
block 25, $3,034 54, and C. E. Chetlain was charged with ½ interest
208 lots 1, 2, & 3, block 25, $3,034 54, and Toof, Phillips & Co. were credited with $6,069 08. Their books also show that about the 20th or 21st of Feb'y, '68, notes and accounts were sold for about 50 c'ts on the dollar. I examined the bill of lading book carefully, referred to in the depositions of C. E. Chetlain and H. H. Frisbee, and found that it had been more than half filled and all the leaves in good order up to Dec. 24th, 1867, then quite a large number of leaves were cut out, and the first leaf after the cut space was filled up and bore date of Nov. 4th, 1868. I examined the cut space carefully. They appeared to have been all cut out at one time, and the cut had a fresh appearance as though it had been recently done. A number of leaves had been taken from the back part of the book, which presented quite a different appearance, and had evidently been taken out at a different time and manner. This examination was during the taking of depositions in
209 Augusta, March 2d, 1869. I examined this same book in connection with C. E. Chetlain and Gen'l Bennett about the 12th or 13th of May, 1868, in reference to some other matters, and do not think any leaves were missing at that time. While examining the books of W. P. Haines & Co., about the 2d and 3d of March, 1869, I found that their bills-receivable book showed that a number of entries were marked paid, and others had red lines drawn across them, without any entry to show when they were settled; and on examining their cash book I could not find any corresponding entries. The examination of these two books was not thorough, for I did not have time. The blotter or day-book shown to me by the assignee and C. E. Chetlain as the last one used by W. P. Haines & Co. was full and did not show any entries later, I think, than 1st Feb'y, 1868, although the blotter did not show entries later than the 1st Feb'y, '68, still I found entries in the journal up to
210 about 24th Feb'y, 1868.

Question 6. State whether or not you ever received any notice of the time and place of sale of the Iowa lands.

Answer. I never received any notice either from the assignee, R. W.

Martin, or by publication in the Little Rock Republican. I do not think the notice was ever published.

Question 7. Do you know anything of the sale under the deed in trust, executed by W. P. Haines & Co., to secure Toof, Phillips & Co.? If yea, state all you know in regard to it.

Answer. I attended the sale in Augusta, April 21, '68, and acted as clerk, received the money, and paid proceeds over to Toof, Phillips & Co. 1 wagon sold to N. Gregory for 17 50; one blind ox to H. H. Frisbee for $11 00; 1 yoke oxen to Y. Garland for $50 00; 1 yoke oxen to N. Gregory for $47 00; 1 small black mule to R. W. Martin for $60 00; 1 small dunn mule to Deb Corley for $72 50; 1 black mule to R. R. Fitzhugh for $50 00; 1 grey mule to James Raney for $146 00;
211 1 bald-face mule to R. W. Martin for $80 00; 1 black mule to J. M. Shell for $107 00; 1 large black mule to H. H. Frisbee for $67 50; 4 bales cotton, 1,620 lbs., at 15 cts., $243 00, to Toof, Phillips & Co. These 4 bales cotton were held by agents of Freedman's Bureau for labor claim of one Ruben Cogswell, and I had to pay said Cogswell $50 before the agent would release the cotton. This fifty dollars has never been charged to W. P. Haines & Co. 2 bales cotton, 1,042 lbs., @ 23, $239 66, sold to Toof, Phillips & Co. At the time of the sale of the cotton one of the trustees, J. M. McCurdy, or his attorney—am not certain which—announced publicly that the 4 bales were held by agent for Freedman's Bureau, but that the two bales were free from all encumbrance. R. W. Martin and C. E. Chetlain were present at the time the announcement was made. The assignee, R. W. Martin, has since brought suit against J. M. McCurdy for these two last-named bales of cotton.

Defendant waiving cross-examination, further deponent saith
212 not.

GEORGE G. MAHAN.

Sworn to and subscribed before me March 17, 1869.

HUME F. HILL,
U. S. Com'r.

JOHN F. WALKER, a witness known to be of lawful age, being at the same time and place produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the suit aforesaid, did, on his oath aforesaid, depose as follows on the part of the defendants:

Question 1. State your name, age, residence, and occupation.

Answer. My name is John F. Walker; am 19 years old; live in Memphis; and am bookeeper for Toof, Phillips & Co.

Question 2. How long have you been in the employ of Toof, Phillips & Co. as bookeeper?

Answer. Since November, 1867.

Question 3. What disposition was made upon the books of
213 Toof, Phillips & Co. of two drafts drawn by F. M. Mahan at Augusta, Ark., about Jan'y 18th, 1868; one in favor of W. P. Haines for $3,034 54, or about that amount; the other, favor C. E. Chetlain, for same amount?

Answer. The drafts were charged to F. M. Mahan, upon Toof, Phillips & Co.'s books, and credited to W. P. Haines & Co.

Defendant waiving cross-examination, further deponent saith not.

JOHN F. WALKER.

Sworn to and subscribed March 17, 1869.

HUME F. HILL,
U. S. Com'r.

JOHN S. TOOF, a witness known to me to be of lawful age, being to me, at the time and place aforesaid, produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit,
214 on the part of the defendants:

Question 1. State your name, age, residence, and occupation. If you are a member of any firm, state its style and place of business.

Answer. My name is John S. Toof; age, 32 years; occupation, merchants, and member of firm of Toof, Phill[illegible]s & Co.; residence, Memphis, Tenn.

Question 2. State what caused the firm of Toof, Phillips & Co. to cease giving credit to the firm of W. P. Haines & Co., and, as nearly as you can, the date of that cessation.

Answer. During latter part of Jan'y, or first of Feb'y, 1868, we received a despatch from our partner F. M. Mahan, then in N. Orleans, advising us not to ship goods to, or accept drafts from, W. P. Haines & Co., as they were playing false to us in shipping cotton to N. Orleans, several bales of which, he further stated, he had discovered and attached. Thereupon we declined to do further business with him.

Question 3. Did you afterward have any conversation with
215 either Haines or Chetlain? If yea, state the matter and result of the conversation, and, as nearly as you can, the date and all that was said.

Answer. On or about the middle of February, 1868, W. P. Haines came to our store, and, in a very earnest and lengthy conversation, assured Mr. F. M. Mahan and myself of the entire solvency of the firm of W. P. Haines & Co.; that they were abundantly able to pay all their debts and have a large balance left; that cotton was backward in coming in, and that all they asked was a little time and they would pay us every dollar they owed us, with interest; he plead with tears in his eyes, and promised that, if we would release the cotton Mr. Mahan had attached in N. Orleans, our debt should be paid as soon as the weather would permit them to get in their cotton; also, that he would not
216 only ship us every bale grown on places W. P. Haines & Co. were cultivating, but also every bale that they had a claim on through advances to other parties, as they had previously agreed to do. Believing in his promises we did release the cotton, and ordered the proceeds paid to W. P. Haines & Co. We also, at the same time, agreed to continue business with them as heretofore. At the date of the foregoing we had not the slightest intimation, from any source, that W. P. Haines & Co. contemplated bankrupting, but continued to have full faith in their solvency, until the receipt of a letter from them, dated on or about Feb'y 25, 1868, wherein they stated to us that they had been, or would be, compelled to go into bankruptcy, in consequence of other parties having bankrupted on them for large amounts. Said letter is exhibited with F. M. Mahan's deposition.

Question 4. How were the two drafts drawn on Toof, Phillips & Co., by F. M. Mahan, about Jan. 18th, 1868, in favor of W. P. Haines
217 and C. E. Chetlain respectively, disposed of upon the books of Toof, Phillips & Co.?

Answer. They were credited to W. P. Haines & Co.'s account, as directed by them by letter, and charged to the private ac. of F. M. Mahan.

Question 5. State anything else you may know, material to either party to that suit.

Answer. At the time of the conversation above referred to, W. P. Haines exhibited quite a number of mortgages and deeds of trust, held by W. P. Haines & Co. on crops, to raise which they had made advances, and urged those mortgages as evidences of the solvency of their firm. He also acknowledged, fully and freely, that they had acted in bad faith to us in shipping cotton to New Orleans, and promised, in the most solemn manner, that in future they would rigidly adhere to the agreement, made with us early in the season, to ship us all cottons they could raise or control.

218 Cross-interrogatories, filed by complainant:

Question. Did you not have Haines & Chetlain's drafts protested, during the months of November and December, 1867, and January, 1868?

Answer. No authorized draft upon us, by W. P. Haines & Co., were ever protested by Toof, Phillips & Co. And further defendant saith not.

JOHN S. TOOF.

Sworn to and subscribed before me March 17, 1869.

HUME F. HILL,
U. S. Com'r.

UNITED STATES OF AMERICA,
Eighth Circuit and District of West Tennessee, City of Memphis:

Be it remembered that on the 10th day of December, in the year of our Lord one thousand eight hundred and sixty-nine, before me, Hume F. Hill, commissioner duly appointed on the 12th April, 1866, by the circuit court of the United States in and for the district of West
219 Tennessee, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial court of the United States," passed September 24th, 1789, personally appeared George G. Mahan, a person of sound mind and lawful age, a witness for the defendants in civil suit now depending in the district court of the United States in and for the eastern district of Arkansas, wherein Rufus W. Martin vs. Toof, Phillips & Co.

And the said GEO. G. MAHAN being by me first carefully exam-
220 ined and cautioned, and sworn to testify the whole truth and nothing but the truth, did depose and say as follows, to wit:

HUME F. HILL,
U. S. Com'r.

Question 1. Has not your deposition been previously taken in this case?

Answer. It has.

Question 2. If any matter or thing has come to your knowledge since your deposition was taken, which is or may be material to either party in this matter or cause, please state the same fully and completely.

Answer. When I was in Iowa, last July, I had a long talk with W. P. Haines in relation to his former business in Arkansas, his failure, bankruptcy, &c., also about this suit. He stated that he was perfectly surprised to learn that R. W. Martin was contending for the Augusta property; that he supposed Frank Mahan was in undisputed possession.

He said that he and C. E. Chetlain had made an unconditional
221 sale, and one which he considerad at the time was a good one for them, and if Frank Mahan did not have a perfect title to the property, he (Haines) would consider it useless for any man to try to get a title to rêal estate in Arkansas. I told him that R. W. Martin contended that the transfers or sales were made for the purpose of securing Toof, Phillips & Co., and to the injury of other creditors—you and Frank Mahan both knowing at the time that you were insolvent. He answered that Martin knew better than that. Said he, "Do you suppose we would have been such d—— fools as to sell our homesteads if we thought we were broke? No, sir; we would have held on to them, for we knew they could not be sold for our debts; we expected to go on in business, and we would have got through, too, if it had not been for that bureau agent, and so many banking on us." He said that
he had just struck a trial balance, about the time Frank Mahan
222 got to Augusta, about the middle of the year 1868, and he was perfectly satisfied that they could go through all right, and that he told Frank so. I asked him if it was true, as Martin charged, that Frank Mahan bought the houses for Toof, Phillips & Co. He answered, "No, sir; no, sir; Frank Mahan bought the houses for himself." He bought our one-half interest in the store-house for Toof, Phillips & Co., and we made them a deed for it; but the dwelling-houses he bought for himself. I asked him if it was true, as charged, that it was a part of the contract for the drafts of Frank Mahan to be sent to Toof, Phillips & Co., to be placed to the credit of W. P. Haines & Co. Said he, "No, sir; no, sir; there was nothing said about what should be done with the drafts, but we were to have credit for our half interest in the store-house. I asked him why he sent the drafts to Toof, Phillips & Co., to be placed to the credit of W. P. Haines & Co., if that was not part of the agree-
223 ment. He answered that he thought he ought to send them to them as the drafts were on them, and they were their largest creditors, and had rendered them more favors than any other house. He said that everything that was said and done between W. P. Haines & Co., and Frank Mahan, on or about the 18th of Jan., 1868, was perfectly straightforward and business-like, and that he never dreampt of its being called in question. I asked Mr. Haines if he knew what had become of the trial balance he referred to; that I had tried my best to have it produced, but could not get it. He answered that when he left Augusta, he left that and all other books and papers in the possession of his former partner, C. E. Chetlain, and had not seen or heard anything about them since. And further deponent saith not.

GEORGE G. MAHAN.

Filed December 22, 1869.

CHA'S P. REDMOND, *Clerk.*

224 And afterwards, on the 11th day of October, 1869, it being yet of said October term, the following further proceedings were had, to wit:

RUFUS W. MARTIN, ASSIGNEE OF HAINES & Co., *vs.* TOOF, PHILLIPS & Co. } Chancery.

This cause having been submitted to the court, and the court having carefully read the pleadings and proofs, and being unable to solve the questions involved to its satisfaction, on the proofs as they now stand, orders and directs that a commission duly issue to take the deposition

of William P. Haines, one of the bankrupts, and that the following interrogatories, together with such interrogatories as the parties hereto, or either of them, may see proper to propound, be forwarded with said commission to be propounded to and answered by said Haines.

1. What amount did the firm of William P. Haines & Co. owe
225 on the 18th day of January, 1868? When was this indebtedness contracted, and what proportion of it was matured at that date, (18 January, 1868,) and how long over due was it?

2. Did the firm of William P. Haines & Co. meet their commercial paper as it fell due? If not, when did they fail to do so, and what amount of their commercial paper was over due and unpaid on the 18th January, 1868?

3. State the full amount and value of all the property and assets belonging to the firm of William P. Haines & Co., on the 18th January, 1868. State particularly in what said assets consisted, and their actual value.

4. State whether all or any of the members of said firm of William P. Haines & Co. owned property or possessed means in their own right, exclusive of the partnership property; and if so, state the kind
226 and value of the individual property owned or possessed by the members of said firm.

5. Did the members of said firm, or either of them, owe any individual debts? If yea, state the amount of such debts and from whom the same was owing.

6. Did the firm of William P. Haines & Co. owe Toof, Phillips & Co., of Memphis? If yea, state whether any payment or payments were made on said indebtedness after the first day of January, 1868; and if yea, state the amount of such payment or payments, how the same were made, to whom made, and how they came to be made. You will state fully, accurately, and precisely all that took place between William P. Haines & Co. and the said Toof, Phillips & Co., or their agent, in relation to said payment.

7. State whether William P. Haines & Co., or the members of
227 said firm conveyed any real estate to Toof, Phillips & Co., or to any member of that firm; if yea, state when and to whom such conveyance or conveyances were made, and state fully and in detail all the facts and circumstances connected with the making of said conveyance or conveyances, how the same came to be made, the consideration for the same, and all that was said and agreed between the parties in relation thereto. Give a full, detailed, and accurate history of the whole transaction.

8. Who made the contract for the purchase of said property, and by whom and for whom was the property purchased, and what was the agreement at the time of the sale, if any, as to the disposition or appropriation to be made of the price agreed to be paid for said property?

9. What knowledge, if any, had Toof, Phillips & Co. of the
228 financial standing and condition of William P. Haines & Co. at the date of the conveyance before referred to? What statements, if any, did William P. Haines & Co. make to the party representing Toof, Phillips & Co. as to their financial condition and ability to meet their engagements; and did or did not said party examine the books of said Haines & Co.; and did or not said books disclose fully and truly the condition of said firm? State fully and particularly all you know on this subject.

10. If you have answered that William P. Haines & Co. made a payment on their indebtedness to Toof, Phillips & Co. in real estate, or only

of the proceeds of the sale of the real estate, you will state whether, after making such payment, William P. Haines & Co. had sufficient means to pay their other creditors. If you answer that they had not, state whether Toof, Phillips & Co. knew that fact, and state par-
229 ticularly what opportunities, if any, they had of knowing that fact.

11. Did William P. Haines & Co., at the time they made this payment to Toof, Phillips & Co., expect to continue in business and discharge their other debts? If you answer in the affirmative, state on what that expectation was grounded and how it came that they so soon went into bankruptcy?

And it is further ordered that both parties hereto have leave to take depositions generally in this cause.

Which deposition of WILLIAM P. HAINES is in the words and figures following to wit:

For interrogatories see preceding record entry.

Ans. to 1st interrogatory. I think our indebtedness was between thirty thousand dollars and thirty-three thousand dollars. I do not now
230 recollect the exact amount, but my schedules on file will show. I had, when the schedule was made up, my books, from which the exact amount could be ascertained, but when I left Augusta, Arkansas, which was in the month of March, A. D. 1868, I left all of the books and papers relating to the business of the firm with my late partner, Charles E. Chetlain, and I have not seen them since. The greater part of our indebtedness had matured at that date. I do not now recollect but one debt (that of Walker & Bro.) that was not matured at that date. The schedule will show both dates and amounts and how long over due.

Ans. to 2d interrogatory. Said firm did not towards the last of its existence meet its paper when due. I cannot say exactly when it first failed to meet its paper, but I think the whole indebtedness,
231 except Walker & Bro's, was, on the eighteenth day of January, 1868, over-due and unpaid.

Ans. to 3d interrogatory. Said property consisted of real estate, merchandise, notes, and books accounts. I cannot say, without reference to the books of the firm or the schedules, what was the precise amount, nor do I know their actual value. There were also some mules, horses, cattle, and farming tools, on a portion of which Toof, Phillips & Co. had a deed of trust.

Ans. to 4th interrogatory. None except a double dwelling-house, one-half of which belongs to each of the partners—one-half to William P. Haines and one-half to Charles E. Chetlain. This was not considered as belonging to the partnership, but one-half to each individually, as above stated. The entire value was about seven thousand dollars; on
232 the interest of each about three thousand and five hundred dollars.

Ans. to 5th interrogatory. Charles E. Chetlain was owing at one time twenty-five hundred dollars and some interest; I do not know how much; besides this, I know of no other individual debts.

Ans. to 6th interrogatory. The firm of William P. Haines & Co. were indebted to Toof, Phillips & Co., of Memphis. That firm consisted of John Toof, Charles Phillips, and Frank Mahan, and were our largest creditors. We did make payments to said firm after January 1st, 1868. I cannot say, without reference to our books, whether we sent said firm any drafts other than the ones hereinafter stated, or whether we shipped them any cotton on account after the first day of January, 1868. My partner and myself sold the dwelling-house before referred to to
233 F. M. Mahan, a member of said firm of Toof, Phillips & Co., on

or about the 18th of January, 1868, for about seven thousand dollars, as near as I can now recollect. The books of the firm of William P. Haines & Co. will show the amount. Said Mahan gave each of us a draft upon Toof, Phillips & Co. for about thirty-five hundred dollars. These drafts were to be forwarded to Memphis to Toof, Phillips & Co., and the firm of William P. Haines & Co. were to be credited with the amount of those drafts. This arrangement was carried out. I forwarded the drafts to Toof, Phillips & Co. shortly afterwards, and requested them to place them to the credit of William P. Haines & Co At the time of the sale of the dwelling-house above mentioned, we also sold the undivided half of a store-house, then occupied by us, to Toof, Phillips & Co., for about eighteen hundred dollars, as near as I now remember. My partner and myself executed a deed of the store-
234 house property above mentioned, and delivered the same to said F. M. Mahan on or about the said eighteenth of January, 1868. The eighteen hundred dollars for which we sold the one-half of the store house was to be placed to the credit of William P. Haines & Co. The legal title of the dwelling-house property was not in us. We held a contract for the property, and were indebted seven hundred dollars upon the lots. This contract we assigned to said F. M. Mahan on or about the 18th of January, 1868, and he assumed to pay the amount still due upon the contract. The foregoing is all that I remember to have been paid Toof, Phillips & Co. After January 1st, 1868, the firm of William P. Haines & Co. gave the firm of Toof, Phillips & Co. a deed of trust upon some personal property, as horses, mules, cattle, &c., and I have been told that, after we filed our petition in bankruptcy, they sold the property, but how much they realized I never knew.

235 Ans. to 7th interrogatory. William P. Haines and Charles E. Chetlain did convey certain dwelling-house property and the undivided half of a store-house property, as stated in my answer to the fifth interrogatory, and it was agreed by said Mahan, on behalf of Toof, Phillips & Co., that we should receive further credit and assistance from Toof, Phillips & Co. to enable us to go on with our business as a firm.

Ans. to 8th interrogatory. The parties to said contract were the firm of William P. Haines & Co., on one hand, and Frank Mahan, on the other. Frank Mahan acted for the firm of Toof, Phillips & Co. I have already stated what the agreement was in my answers to the sixth and seventh interrogatories.

236 Ans. to 9th interrogatory. Frank Mahan knew at the time about how we stood. We made the statement to Mr. Mahan that we believed we had sufficient means due us to pay our indebtedness. I do not remember of Mr. Mahan's making any examination of our books at the time. The books did disclose exactly how we stood, so far as books could do. We could not, and did not, know ourselves exactly as to what could and what could not be collected on the indebtednesss to us.

Ans. to 10th interrogatory. Said firm of William P. Haines & Co., after the arrangement with Toof, Phillips & Co. above mentioned, had sufficient assets, as appeared by their books, to pay all their debts. On or about the first day of January, 1868, I struck a balance sheet of the assets and liabilities of the firm of William P. Haines & Co., and at that time I felt satisfied that we could pay all of our indebtedness.

237 Our financial condition did not change between the first of January, 1868, and the 18th of January, 1868. As well as I now recollect, Toof, Phillips & Co. had not at the time of this arrangement with them, on the 18th of January, 1868, any intimation of any want of assets on our part to pay our other creditors, to my knowledge.

Ans. to 11th interrogatory. They did at that time expect to continue

in business. That expectation was grounded on the promise of further credit and assistance made by Frank Mahan on behalf of the firm of Toof, Phillips & Co. On their refusal to give further credit or assistance, we were compelled to stop and go into bankruptcy. This promise of Frank Mahan was the sole inducement to us to convey the store and dwelling-houses to said Mahan for said firm. Many of those who were indebted to the firm of William P. Haines & Co. went into bank-
238 ruptcy, and thus cut off our reasonable hopes of realizing their debts after the 18th of January, 1868, and before the 28th day of February, 1868. During the cotton-planting season of 1867 we had made advances to a large amount to parties engaged in cotton planting, and had been secured by liens upon the cotton crops. We had taken some of this cotton into our possession prior to the 18th of January, 1868, and a portion of it had been seized by the agent of the Freedmen's Bureau. I believe there was also cotton upon which we had liens that was seized by the agent of the Freedmen's Bureau after the eighteenth of January, 1868. When Mr. Frank Mahan was there, on or about the 18th of January, 1868, he and myself went to the agent of the Freedmen's Bureau, and, after consultation with him, he gave us such assurances that both Mr. Mahan and myself fully believed that we should not lose any of this cotton. The agent of
239 the Freedmen's Bureau did not keep his word in regard to that matter, and after the eighteenth of January, and prior to the filing of our petition in bankruptcy, we lost this cotton. Our loss from this source alone amounted to several thousand of dollars; how much I cannot now state, but our losses from this source were entirely unsuspected on the eighteenth of January, 1868, and materially affected our resources. As I now recollect, we lost between six thousand dollars and seven thousand dollars of claims, notes, and accounts by parties going into bankruptcy between the eighteenth of January, 1868, and the 28th of February. We lost more than this, but I cannot now recollect the amounts. The schedules filed by parties who filed petitions in bankruptcy in the district court of the United States for the eastern district of Arkansas, wherein William P. Haines & Co. are scheduled as
240 creditors, will show what we lost through this source.

WILLIAM P. HAINES.

Taken, subscribed, and sworn to before me this eighteenth day of November, in the year of our Lord eighteen hundred and sixty-nine.

[L. S.] D. W. JACKSON,
Notary Public in and for the city of Galena.

Filed Nov. 24, 1869; opened in the mail.

CHA'S P. REDMOND, *Clerk.*

And afterwards, on December 22d, A. D. 1869, it being yet a day of the October term aforesaid, the following further proceedings were had, to wit:

RUFUS W. MARTIN, ASSIGNEE OF HAINES & CO.,
vs.
TOOF, PHILLIPS & CO.

241 Ordered that the deposition of George G. Mahan, on file in this cause, be opened and published by the clerk.

And afterwards, on the fourteenth day of February, A. D. 1870, it being yet a day of the October term aforesaid, the following further proceedings were had, to wit:

RUFUS W. MARTIN, AS ASSIGNEE IN BANKruptcy of William P. Haines and Charles E. Chetlain, lately merchants and partners doing business under the firm name of W. P. Haines & Co.,

vs.

JOHN S. TOOF, CHARLES J. PHILLIPS, & FRANK M. Mahan, merchants and partners doing business under the firm name of Toof, Phillips & Co., William P. Haines, and Charles E. Chetlain.

This cause coming on for a final hearing, and the court being
242 now fully advised of what decree to render herein, doth find from the pleadings and proofs submitted in this cause, that the conveyance made by the said bankrupts, W. P. Haines & Co., on the 18th day of January, 1868, to the said defendants, Toof, Phillips & Co., of a parcel or tract of land described as follows: one undivided half interest of certain real estate situated in the town of Augusta, beginning at the northeast corner of lot number one (1) in block number nine (9) on the south side of Main street; thence running south on the line dividing lots number one (1) and two (2) of said block from lots No. eleven (11) and twelve (12) of the same block to the southeast corner of lot No. two (2;) thence east twenty-five (25) feet on the line dividing lots (10) ten and eleven (11) in said block; thence due north one hundred (100) feet to Main street; thence west to the place of
243 beginning; or, as described in the original survey of the "city" of Augusta, twenty-five (25) feet off the west ends of lots No. eleven (11) and twelve in said block; No. nine (9) including the storehouse then occupied by the said W. P. Haines & Co., and also the deed of conveyance made on the 5th day of February, 1868, by Thomas Hough and wife to Frank M. Mahan, one of the defendants herein, purporting to convey lots No. one (1,) two, and three (3,) in block No. twenty-five (25;) the said lots fronting on Broadway and Front streets, and intersecting (adjoining) lot No. (4) four on the east and lot No. fourteen (14) on the north in the same block, as shown by the plat of said town, were fraudulent conveyances of the title of the said bankrupts in the said parcels of land, they being at the time insolvent, of which the said defendants, Toof, Phillips & Co., and Frank M. Mahan,
244 had notice at the time, made with the intent to give a preference to the grantees in the said conveyances, who were then the creditors of the said bankrupts, being made also within four months next before the filing of the petition in bankruptcy of the said W. P. Haines & Co., and accepted with a view and intent of hindering and defeating the operation of the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

Wherefore it is ordered, considered, and decreed, that the said conveyances be, and they are hereby, cancelled, annulled, and held for naught, and that all the title, right, or interest which would otherwise vest thereunder in the said defendants, or either of them, be, and the same is hereby, vested in the said plaintiff as assignee in bankruptcy of the said W. P. Haines & Co. And that the said plaintiff, as
245 assignee as aforesaid, pay into court for the said Toof, Phillips & Co. the sum of seven hundred and forty dollars and eighty-eight cents ($740 88,) being the amount by them paid to Thomas Hough in discharge of a lien held by him on said last-named lots of land,

superior to the title of the said bankrupts thereto, together with interest on the same at the rate of six per centum per annum from the 5th day of February, 1868, until paid, less any rents and profits of any of the said land which may have been received by the said Mahan or Toof, Phillips & Co. under color of their said fraudulent conveyances, and reference is made to the master, Charles P. Redmond, herein to ascertain and report to the court, at the next term hereof, the value and amount of all rents and profits so received by them. And it is further considered, that the said defendants, Toof, Phillips & Co., pay all the
246 costs of this suit; and if any money is paid into court under this decree, the said costs shall be reserved out of the same by the said master. And this cause is reserved for further directions, and the said defendants, Toof, Phillips & Co., pray an appeal herein, which is granted.

And afterwards, on the twenty-third day of February, A. D. 1870, it being yet a day of the October term aforesaid, the following further proceedings were had, to wit:

RUFUS W. MARTIN, ASSIGNEE OF HAINES & CO.,
vs.
TOOF, PHILLIPS & CO.

And now comes the defendants, by Garland and Nash, their solicitors, and file herein their supersedeas bond, which is approved by the court and ordered to operate as a supersedeas in this cause, which
247 supersedeas bond is in the words and figures following, to wit:

TOOF, PHILLIPS & CO., APPELLANTS,
vs.
RUFUS MARTIN, APPELLEE.

Know all men by these presents, that we, John S. Toof, Charles J. Phillips, and Frank M. Mahan, composing the firm of Toof, Phillips & Co., (merchants of Memphis, Tenn.,) and O. P. Lyles, are held and firmly bound unto Rufus W. Martin, as assignee (in bankruptcy) of Haines & Chetlain, in the sum of five hundred dollars, to be paid to the said Rufus W. Martin, his successor, administrator, or executors; to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals and dated this the 19th day of February, A. D. 1870.

248 Whereas the above-named Toof, Phillips & Co. hath prosecuted an appeal to the circuit court of the United States for the eastern district of the State of Arkansas, to reverse the judgment rendered in the above-entitled suit by the district court of the United States for the eastern district of Arkansas, in chancery in bankruptcy:

Now, therefore, the condition of this obligation is such, that if the above-named Toof, Phillips & Co. shall prosecute their said appeal to effect, and answer all damages and costs if he should fail in the appeal, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

TOOF, PHILLIPS & CO. [SEAL.]
CHA'S J. PHILLIPS. [SEAL.]
O. P. LYLES. [SEAL.]

Sealed and delivered in presence of—
HUME F. HILL,
U. S. Com'r, Dist. West Tenn.

249 I have examined and approved this bond and know that Toof, Phillips & Co., as well as O. P. Lyles, have sufficient property in Arkansas to make good this bond.

[L. S.]

HUME F. HILL,
U. S. Com'r, D. W. Tenn.

Filed Feb'y 23, 1870.

CHA'S P. REDMOND, *Clerk.*

Approved by order of court Feb'y 23, 1870.

CHA'S P. REDMOND, *Clerk.*

And afterwards, on March third, A. D. 1870, it being yet a day of the October term aforesaid, the following further proceedings were had, to wit:

RUFUS W. MARTIN, ASSIGNEE OF W. P. HAINES & Co.,
vs.
TOOF, PHILLIPS & Co.

250 It is ordered that the clerk in making up the manscript in this cause include therein the schedules of indebtedness to the petition in bankruptcy of W. P. Haines & Co., the same being used in evidence, and also the opinion of the court, as a part of the record in this cause; which opinion is in the words and figures following, to wit:

RUFUS W. MARTIN, ASSIGNEE OF W. P. HAINES & Co.,
vs.
TOOF, PHILLIPS & Co.,

W. P. Haines & Co., a firm composed of W. P. Haines and C. E. Chetlain, were retail merchants doing business at Augusta, in this State. On the 29th day of February, 1868, they filed their petition praying to be adjudged bankrupts, and on the 22d May, 1868, they were so adjudged and the plaintiff appointed assignee. On the 18th day of January, 1868, the bankrupts conveyed to the defendants for the
251 consideration of $1,876 84, to be credited on a debt due from the bankrupts to the defendants, an undivided half of a parcel of real estate owned by the bankrupts as partnership property. At the same time the bankrupts assigned to F. M. Mahan, one of the members of the firm of Toof, Phillips & Co., a title bond they held for certain other real estate in the town of Augusta, on which the bankrupts had made valuable improvements. This title bond was assigned to said Mahan for the consideration of $7,000 00, also to be credited on the indebtedness of the bankrupts to Toof, Phillips & Co. There was some $740 00 of the purchase money still due on said property, and this said Mahan paid and procured a conveyance to himself from one Hough, the owner of the fee of the property.

The plaintiff charges, that these conveyances were made in
252 fraud of the bankrupt act; that the bankrupts were insolvent at the time they made them; that they were made with intent to give a preference to the defendants, and that the defendants, at the time said conveyances were made, knew or had reasonable cause to believe the bankrupts were insolvent, and that said conveyances were made in fraud of the bankrupt act. Plaintiff also charges, that the

assignment of the title bond to F. M. Mahan, one of the defendants, was in fact for the use and benefit of the defendants, for the purpose of securing the said property or its value to the defendants, in fraud of the rights of the other creditors of the bankrupts, and that this purpose and intention was well known to, and participated in by, said Mahan.

In determining this case the following inquiries arise:

1. Was the firm of W. P. Haines & Co. insolvent at the date of these conveyances?

253 2. Were these conveyances made with a view to give a preference to defendants over the other creditors of the bankrupts?

I. That the bankrupts were in fact hopelessly insolvent at the date of this transaction cannot be questioned, as will be seen from the following statement of their liabilities and assets:

Indebtedness of firm at date of conveyance, as per schedules on file and referred to in deposition of Haines		$55,353 01
Individual indebtedness of members of firm:		
Chetlain		3,850 00
Haines		150 00
Total indebtedness at date of conveyances		$59,308 01
Assets of firm, as per schedules	$21,851 41	
Store-house and lot, say	1,800 00	
254 Dwelling-houses of each partner, say $2,000 00 each	4,000 00	
		$27,651 41
Excess of liabilities over assets		$31,656 60

About $18,000 00 of the assets consisted of notes and accounts, most of which are shown to be worthless. Nearly all of the remaining assets, as shown by bankrupts' schedules, consisted of personal property, on which defendants held a mortgage, and the real estate embraced in the bankrupts' conveyances to defendants. The stock of goods on hand invoiced, as shown by the schedules, $2,600 00. And this was the condition of the bankrupts' property at the date of the conveyances to defendants. Chetlain and Frisbee both testify that the bankrupts sold no goods and did no business after that time. The indebtedness of the bankrupts is stated by some of the witnesses to have been from $31,000 00 to $35,000 00. How this discrepancy occurs between the statement of
255 indebtedness by the witness, and the statement of the indebtedness by the bankrupts in their schedules, does not appear, and is not material, as, taking either as correct, the bankrupts were hopelessly insolvent. All the bankrupts' indebtedness, with slight exceptions, was in the shape of commercial paper, and with the exception of a debt owing to Walker, Bro. & Co., amounting only to some $1,000 00, was overdue and unpaid at the date of this transaction, (see ans. of Haines to 2d inter.) Creditors had pressed the bankrupts for payment of their debts without results, their stock of goods had been levied on, and their store closed by the sheriff, by virtue of an execution issued on a judgment against one of the bankrupts. They had contemplated going into bankruptcy, and during the fall and winter of 1867–8 they only paid (excluding
256 payments to defendants) $500 00 on an indebtedness of over $50,000 00 then overdue. (See deposition of Chetlain.) The inability to pay debts in the ordinary course of business, as merchants in

trade usually do, constitutes insolvency within the meaning of the bankrupt act. The bankrupts could not pay their debts, in the ordinary course of business, and they knew it, and they must therefore be held to have had knowledge of their insolvency.

II. Knowing they were insolvent and unable to pay their debts, they conveyed to defendants a large portion of their property, in part satisfaction of a pre-existing debt. The necessary effect of this conveyance was to give the defendants a preference, and they must be held to have intended the necessary result of their action.

The witness Frisbee says that in the latter part of December,
257 1867, "I assisted Mr. Haines in making up his balance sheets. The result was that their available assets was not sufficient to pay their indebtedness. (Pp. 1 and 2 of Frisbee's deposition.)

III. The defendants not only had reasonable cause to believe the bankrupts insolvent, but they had actual notice of the fact. Chetlain, in his deposition, says: "I told Mr. Mahan we could not pay out," (page 3 of Chetlain's deposition,) and the same witness says that Mahan was in Augusta during the time their goods were levied on, and that they had an interview with Mr. Mahan on the subject, (page 13 same dep.) And the witness McCurdy swears that some time in December, 1867, defendants sent him for collection a note against the bankrupts; that he was unable to collect it; and he there says: "I wrote to Toof, Phillips & Co. that I thought they had better look to their inter-
258 ests, as my conviction was that it was doubtful about their being able to collect their debt from Wm. P. Haines & Co. I think shortly after writing this letter that a representative of the house came round to look after the matter. I think it was Mr. F. M. Mahan."

The defendants in their answer say, "It is true, as alleged in said bill, that at the time of the said several transactions said Haines & Co. owed large amounts of debts, but that they were then insolvent is untrue; but on the contrary it is true that at the time aforesaid said Haines & Co. had available assets in excess of their indebtedness to the amount of sixteen thousand dollars; that while it is true said Haines & Co. did owe Toof, Phillips & Co. they were desirous to secure their debt, yet they deny they did so, or that they made any effort to secure the same regardless of the rights of other creditors; but at the time aforesaid
259 said Haines & Co. were not only able to secure said debt of defendants, but also to make good and secure all their other liabilities." (See pages 3 and 4 of answer.)

Here is a direct admission of knowledge of the bankrupts' indebtedness, and the amount; that the bankrupts were able to "make good and secure their other indebtedness" is fairly tantamount to a confession that they could not pay in the ordinary course of business, as merchants usually do. They had positive knowledge the bankrupts had not done so in their case. But all doubts on this point are put at rest by the defendants' answer to the 1st inter. of the bill, in which they say, "At the time of making the transfers defendants do not believe said Haines & Co. were able to pay their debts in money, but they were able to
260 do so on fair market valuation of the property they owned, and of their assets generally, and they were then able to do so."

Here is a direct confession of a fact that in law constitutes insolvency, and it is idle for defendants to profess ignorance of the insolvency of the bankrupts in face of such a confession.

If the bankrupts could not pay their debts in the ordinary course of business, that is in money as they fell due, they were insolvent, and if defendants did not know this constituted insolvency within the mean-

ing of the bankrupt act, it was because they were ignorant of the law, and that ignorance can avail them nothing in this suit, and their denial of knowledge of the insolvency of the bankrupts must, in view of their own confessions and the overwhelming proof in the case, be held to be a denial of the law rather than the fact.

The transactions themselves being out of the ordinary course
261 of business, the bankrupt act declares them prima facie fraudulent, and casts on the defendants the onus of showing they were not so. They not only fail to rebut this prima facie case, but their own admissions and the proofs in the case show that the transactions were, in fact, frauds upon the bankrupt act.

The effort to make it appear that the transfer of the bankrupts of their homesteads to Mahan was a bona fide transaction, and that it was entered into without any view or expectation that the consideration Mahan was to pay for the property was to apply as a credit on the indebtedness of the bankrupts to the defendants, is negatived by every fact and circumstance appearing in the whole case.

262 Chetlain swears positively that it was "expressly understood between me and Mr. Mahan that the drafts (Mahan's drafts for the price of the property) should go to our credit." (Page 11, Chetlain's dep.)

Haines swears to same effect. (See his answer to int. 6.)

The pretence that Haines and Chetlain were at liberty to make what disposition they pleased of Mahan's drafts on Toof, Phillips & Co. for the $7,000 00 agreed to pay for the property, and that their transmission to Toof, Phillips & Co., by Haines & Chetlain, with instructions to place to the credit of Haines & Co., was an agreeable surprise, is too incredible for belief.

It is obvious that these drafts never would have been paid if Haines & Chetlain had transferred them to any other of their creditors, or if they had demanded the money on them.

The claim that Mahan made this purchase in good faith, in his
263 own name and for himself, as "an investment," cannot be supported.

The property which he would have it appear he purchased as an investment on private account for seven thousand dollars, to be paid in cash, is shown by the testimony of Chetlain (page 5 of his dep.) to have been worth only $4.000 00, and, by the testimony of Hamblet, to have been worth only $3,500 00, and it is valued by the bankrupts in their schedules at $4,000 00, and we may reasonably suppose its value was not underestimated by them.

The property, at the same time, was subject to a lien of $740, for the original purchase money. That some inducement other than a desire to make "an investment" must have operated on Mahan to have induced him to give $7,000 00 for property worth at most but $4,000 00, with an incumbrance on it for $740 00, is a conclusion which the mind cannot resist.

264 What was that inducement? But one answer can be given to this question. It was to secure this property for his firm, on account of the bankrupts' indebtedness to them, and the testimony of the witness Mahan must be based rather on the form of the transaction, as evidenced by the papers, than on the actual intention and purpose of the parties.

That he expected to pay to his firm $7,000 00 in cash for taking up the drafts he drew for the agreed price of this property, I do not believe, nor do I believe he could or would so swear. It is true he says "the

amount was charged up to him on the books of the firm," so was the title bond assigned to him and the deed made to him, but equity pays no regard to the forms resorted to by parties in fraud of the law.

Chetlain and Haines both swear, and every fact in the case shows, that the inducement to this purchase on the part of Mahan was to secure the value of this property to his firm, and on the part of the bankrupts it was to give a preference to the defendants and to obtain
265 further advances. These advances Mahan promised to make, in order to secure these conveyances, but as soon as he obtained the conveyances the defendants refused to make any further sales or advances to the bankrupts. (See depositions of Haines & Chetlain and letter of bankrupts to defendants, and letter of Mahan to bankrupts.)

Mahan admits he "agreed at the same time to continue selling them goods on the usual time, same as we had been doing before, and we continued to do business with them as usual until some time in the following month." If he means to be understood as saying defendants sold the bankrupts' goods on credit, or made any advances to them in any manner after the date of these conveyances, he is contradicted by the positive testimony of Haines and Chetlain, and by Exhibit "A" to his own deposition, which contains a full statement of defendants'
266 dealings with the bankrupts, and shows that defendants did not sell the bankrupts any goods or give credit to them in any way whatever after the date of these conveyances.

It must be recollected that in this case the interests both of the bankrupts and defendants are adverse to the assignee, for if the plaintiff succeeds it can be only on the ground that the bankrupts made a preference in fraud of the bankrupt act, which would preclude them from obtaining a discharge, and the defendants, of course, are interested to the value of the property. It is not, therefore, very remarkable that they should strive to avoid a conclusion leading to such results. As the evidence shows a state of facts from which the law will infer and declare insolvency, and an intent to prefer, it is but fair to presume their denials were intended to repel a charge of actual moral fraud, and that they were made in ignorance of the legal effects of their action.

267 No one who will read carefully the pleadings and proofs in this case can resist the conclusion that the transaction was a bold effort of an enterprising and cunning creditor to possess himself of the bulk of the property of the bankrupts, in fraud of the bankrupt act and the other creditors of the bankrupts.

The conclusions reached on the law and the facts of this case are fully supported by the ruling of this court in the case of Rison, assignee, vs. Knapp, and in the following cases: In matter of James Black and W'm Secor, 1 Bank Reg., 81; Merch'ts Nat. B'k vs. Treaux, ib., 146; in re, Noah S. Arnold, 2 Bank Reg., 61; in re, Benj. C. Gay, ib., 114; Haughey, assignee, vs. Albin, ib., 129; Wilson, assignee, vs. Stortz et al., ib., 149; Farrin vs. Crawford et al., ib., 181; in re, Randall and Sunderland, 3 Bank Reg., 4; Ahl et al. vs. Thomer, ib., 29; McDonaugh et al. vs. Rafterly, ib., 53; in re, Kingsbury et al., ib., 84; Graham, assignee,
268 vs. Stork and others, ib., 93; Scammon, assignee, vs. Cole et al., ib., 100; Campbell, assignee, vs. Trader's Nat. Bank, 2 Chicago Legal News, p. 148.

The mortgage on the personal property and the prospective crop of the bankrupts, executed to secure the defendants for advances made and to be made to aid in the production of a cotton crop, was executed many months before they were adjudged bankrupts, and, so far as the proof shows, before they were insolvent or the defendants had reason

to believe them to be so; and so far as relates to the property mentioned in this mortgage the bill is dismissed. As to the real estate conveyed by the bankrupts to Mahan and to the defendants, a decree will be entered for the complainant, vesting the title of the property in him.

The defendants should be repaid the $740 00 paid out by them to perfect the title to this property, and the decree will require the
269 complainant to pay that sum to them, after deducting therefrom the reasonable rents and profits of the property during the time they have had the possession.

A master will be appointed to take and state the account.

LIABILITIES.

Amount of debts due cred's to be paid in full	100 00
Amount of debts due cred's holding securities	20,502 83
Amount of claims unsecured	34,750 18
Total amount of liabilities	$55,353 01

ASSETS.

Bills of exchange, &c	7,121 27
Goods on hand	2,633 00
Horses, &c	475 00
Wagons, &c	25 00
Farming utensils	500 00
Debts due on open ac	10,853 62
Unliquidated claims	243 52
Total am't of assets	$21,851 41

3 journals.
270 2 ledgers.
2 bill lading books.
2 cotton receipt "
1 bill "
6 blotters.

Sworn to the 24th February, 1868.

LIABILITIES.

Am't of claims unsecured: judg't for rent & on bond as P. M., $1,500; P. O. bond	3,850 00
Total am't liabilities	3,850 00

ASSETS.

One-half interest in real estate in Augusta claimed as homestead, whole value $4,000, C's interest say	2,000 00
Am't claimed as excepted under sect. 14	228 50
" " " " State laws, not including homestead	539 50
Total am't assets	2,768 00

Sworn to 24 Feb'y, 1868.

Am't of claims unsecured	105 00
Total am't of liabilities	105 00

271 ASSETS.

One-half interest in real estate in Augusta claimed as homestead; whole value $4,000, H's interest say	2,000 00
160 acres of land in Iowa, title in wife of Haines, value not stated; am't claimed as excepted under sect. 14	441 50
Am't claimed as excepted under State laws, not including homestead	169 50
Total amount of assets	2,611 00

Sworn to 24 Feb'y, 1868.

Opinion delivered Feb'y 12, 1870, and filed.

CHA'S P. REDMOND,
Clerk.

And which schedules in bankruptcy are in the words and figures following, to wit:

272 SCHEDULE A 1.

In the matter of W'm P. Haines & Chas E. Chetlain, b'k'ts.—Statement of all cred's who are to be paid in full, &c.

Reference to ledger or voucher.	Names of creditors.	Residence & occupation of creditors.	Amount. Dol's.	Cts.	When & where contracted.	Nature & consideration of the debt, & whether contracted as copartners or joint contractors, & if so, with whom.
	Ac. H. H. Frisbee ...	Augusta, Ark., clerk	50	00	Jan'y, 1868, Augusta, Ark..	Ac. by petitioners for service as clerk during month of January, 1868.
	" F. A. McClure..	" bookeeper.	50	00	" " ..	Ac. by petitioners for service as bookeper & clerk during the months of December & January.

W. P. HAINES,
C. E. CHETLAIN,
Petitioners.

273 SCHEDULE A 2.

In the matter of William P. Haines & Charles E. Chetlain, b'k'ts.—Creditors holding securities.

Reference to ledger or voucher.	Names of creditors.	Residence & occupation.	When & where contracted.	Value of securities. Dol's.	Cts.	Am't of debts. Dol.	Cts.	Particulars.
	Toof, Phillips & Co	Memphis, Tenn., Merchants	1867, Augusta, Ark..	800	00	20,000	00	Said securities consist of seven mules, five oxen, and one wagon, and whatever cotton is delivered to us under mortgage from our debtors, which amount is indefinite and small on account of the shortness of the crop & the lateness of the season. Also 4 bales cotton, more or less, grown by us, all of which personal property is mortgaged to Toof, Phillips & Co., to secure in part our indebtedness to them, and for the payment of merchandise which they had agreed yet to furnish to an amount not to exceed in all the said sum of $20,000 00.
	Toof, Phillips & Co	Memphis, Tenn., Merchants.	1868, Augusta, Ark..	502	83	502	83	Said security consists of one promissory note for said amount of $502 83, made by R. S. & W. C. Boone to petitioners, & by them transferred to said Toof, Phillips & Co., as collateral security of said amount of $502 83.

W. P. HAINES,
C. E. CHETLAIN,
Petitioners.

SCHEDULE A 3.

In the matter of W'm P. Haines & Charles E. Chetlain, b'k'ts.—Creditors whose claims are unsecured.

Reference to ledger or voucher.	Names of creditors.	Residence & occupation.	Am't. Dol's.	Cts.	When & where contracted.	Nature & consideration of debt, &c.
Note.....	R. N. Booth.....	Cincinnatti, O., m'ch'ts.....	678	99	1867, Cin., O.....	Note by Peters for m'ch'd. 88 p'd.
"	Nathan Gregory.....	Augusta, Ark., farmer.....	480	00	1867, Augusta, Ark.....	" mules.
"	F. B. Kearny & Co.....	Cincinnatti, O., m'ch'ts.....	382	82	'68, Cin., O.....	" m'd'se.
"	McCullom & Bro.....	"	328	40	'67, "	"
"	John Wynne & Co.....	"	2,587	56	" "	"
"	Pencard & Hearn & Hall..	"	391	82	" "	"
"	" " "	"	392	23	" "	"
	Mason & Fant.....	"	1,203	34	" "	"
	Morris & Lytle.....	"	524	54	" "	"
"	John Wynne & Co.....	"	374	90	" "	"
"	John B. Walker.....	"	743	53	" "	P'd on 550. Safe.
"	Mason & Faut.....	"	109	50	" "	
"	Orgill Bro's & Co.....	Memphis, Tenn.....	380	00	Memphis, Tenn.....	
"	Freedman Bro's.....	"	460	12	'67, "	
"	Toof, Phillips & Co.....	"	3,792	72	" "	
	H. Myers & Co.....	"	1,000	00	" "	
"	" " "	"	2,000	00	" "	
	" " "	"	2,000	00	" "	
	" " "	"	1,000	00	" "	M'd'se.
	D. M. Wisdom.....	Iuka, Miss., att'y.....	130	00	" Augusta, Ark.....	Store rent.
	Wm. Spear & Co.....	St. Louis, Mo., m'ch't.....	440	00	" St. Louis, Mo.....	$40 p'd. Tobacco.
	" " "	" " "	318	40	" "	" "
275 Judg't	J. M. Crassett.....	Augusta, Ark's, far.....	69	35	1868, Augusta, Ark.....	Judg't on note by Peters & ex. Stayed by J. M. McCurdy.
	C. A. Stacon.....	St. Louis, Mo., nurseryman.....	53	80	'68, " "	Same as above.
	Penn & Bro.....	Augusta, Ark's, m'ch'ts.....	350	00	'67, " "	$91 91 cash p'd; also proceeds 1 bale cotton. Note by Peters for rent of land.
	Waters, Simmons & Co....	St. Louis, Mo., "	374	82	" St. Louis.....	M'd'se. Cash p'd on note, $217 38.
	Hamblet & Penn.....	Augusta, Ark.. "	404	23	" Augusta.....	
	A. L. Chetlain.....	Salt Lake City, Utah, U. S. Assessor	4,500	00	" Memphis.....	Borrowed money. Cash p'd on note, $108 50.
	D. A. Barrows.....	Galena, Ill's, lumber & flour m'ch't	665	45	" Galena.....	Flour.
	Grogan & Bell.....	Augusta, Ark., brick masons.. ...	69	58	'68, Augusta, Ark.....	Masonry.
	Walker Bros & Co.....	Memphis, Tenn., m'ch'ts.....	392	04	" "	M'd'se.
	" "	" "	391	44	" "	
	" "	" "	391	44	" "	
Ac.....	John Thorpe.....	Aug., Ark., farmer.....	8	21	'67, "	Ac. bal. m'd'se.
	C. L. McMahan.....	" " plasterer.....	100	99	'68, "	Plastering.
276 Ac....	C. L. McMahan.....	Augusta, Ark.....	50	00	'68, Aug., Ark.....	Cistern.
	John P. Perkins.....	" far.....	9	19	" " "	Cotton.

	W'm Munner	" saddler	62	57	'69, " "	Saddlery.
	W'm J. Thompson	" att'y	93	00	" " "	Prof. service.
	F. A. McClure	" painter	28	91	'68, " "	Painting.
	H. H. Frisbee	" carpenter	31	50	'67, " "	Carpentry.
	J. N. Barley	" hotel keeper	5	37	'68, " "	Board.
	R. H. Featherston	" dep. sheriff	29	94	" " "	On sett'ement
	D. M. Wisdom	Iuka, Miss., sawyer	220	00	'67 & 8	House rent.
	L. & S. Salinger	Aug., Ark., m'ch'ts	61	75	'68	Lumber & m'd'se.
	P. Malcloon & Co	St. Louis, Mo., "	43	00	'67, Memphis, Tenn	M'd'se.
	F. P. Kearney & Co	Cincin., O., m'ch'ts	344	75	" Cin., O	Furniture.
	F. H. Booth	Aug., Ark	9	60	" Aug., Ark	On settlement.
	J. B. Wosson & Co	Memphis, Tenn., druggist	44	75	" Memphis	Paints.
277	S. Richardson	Aug., Ark., carriage maker	58	00	'67, Aug	Repa'g buggy.
	Picket & Ramsauer	" att'ys	10	00	" "	Prof. service.
Error note	N. C. Boone	Helena, farmer			" "	Note.
	Ruben Cagsbill	Augusta, laborer	135	90	'68	For labor.
	John Fulsom	" "	58	00	"	" "
Ac	Toof, Phillips & Co	Memphis, Tenn., m'ch'ts	6,448	42	'67 & 8, Memphis	Acc't m'd'se.
Stay bond	Unknown		60	00	1868, Augusta	Stay bond for W. E. Warmock, by petitioners.

W. P. HAINES,
C. E. CHETLAIN,
Petitioners.

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SCHEDULE A 1.

In the matter of W'm P. Haines, b'k't.—Statement of all creditors who are to be paid in full or to whom priority is secured.

Reference to ledger or voucher.	Names of creditors.	Residence & occupation of creditors.	Am't. Dol.	Am't. Cts.	When & where contracted.	Nature & consideration of debt, &c.
None	None	None	None	None	None	None.

W. P. HAINES, *Petitioner.*

279 SCHEDULE A 2.

In the matter of W'm P. Haines, b'k't.—Creditors holding securities.

Ref'ence to ledger or voucher.	Names of creditors.	Residence & occupation.	When & where contracted.	Value of securities.		Am't of debts.		Particulars.
				Dols.	Cts.	Dol.	Ct.	
None	None	None	None	None	None	None	None	None.

W. P. HAINES, *Petitioner.*

280 SCHEDULE A 3.

In the matter of William P. Haines, bankrupt.—Creditors whose claims are unsecured.

Reference to ledger or voucher.	Names of creditors.	Residence & occupation.	Am't.		When & where contracted.	Nature & consideration of debt, &c.
			Dol.	Cts.		
Bond	Toof, Phillips & Co	Memphis, Tenn.; m'ch'ts	$105	00	1868; Augusta, Ark	Petitioner bound in bond in action of replevin in favor of Toof, Phillips & Co., with J. M. McCurdy, Dr. Patterson.

WM. P. HAINES, *Petitioner.*

281 SCHEDULE A 1.

In the matter of Charles E. Chetlain, bankrupt.—Statement of creditors who are to be paid in full or to whom priority is secured.

Reference to ledger or voucher.	Names of creditors.	Residence & occupation of creditors.	Am't.		When & where contracted.	Nature & consideration of debt, &c.
			Dol.	Cts.		
None	None	None	None	None	None	None.

C. E. CHETLAIN, *Petitioner.*

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SCHEDULE A 2.

In the matter of Charles E. Chetlain, b'k't.—Creditors holding securities.

Reference to ledger or voucher.	Names of creditors.	Residence & occupation.	When & where contracted.	Value of securities.		Am't of debt.		Particulars.	
				Dols.	Cts.	Dol.	Cts.		
None	None	None	None		None			None.	None.

C. E. CHETLAIN, *Petitioner.*

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SCHEDULE A 3.

In the matter of Charles E. Chetlain.—Creditors whose claims are unsecured.

Reference to ledger or voucher.	Names of creditors.	Residence & occupation.	Am't.		When & where contracted.	Nature & consideration of debts, &c.
			Dols.	Cts		
Judg't	Henry Whye	Memphis, Tenn.; m'ch't	$2,350	00	1867; Memphis, Tenn	Judg't ac. for rent due from Peter to s'd Whye. Judg't rendered in Memphis, 1867, & transferred to Woodruff County, & State of Arkansas.
Bond	United States	Washington, D. C.; P. O. Dep	1,500	00	1865; Augusta, Ark	On bond to U. S. for W. P. Haines, postmaster at Augusta, Ark.

C. E. CHETLAIN, *Petitioner.*

284 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Charles P. Redmond, clerk of the district court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writing annexed to this certificate are true, correct, and compared copies of their originals on file and remaining of record in my office, and constitute a complete record in the case of Rufus W. Martin, assignee of W. P. Haines & Co., vs. Toof, Phillips, & Co.

In witness whereof I have hereunto set my hand and the seal of said court this 28th day of March, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States of America the ninety-fourth.

[L. S.] Attest: CHA'S P. REDMOND, *Clerk.*

285 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday the 11th day of April, anno Domini one thousand eight hundred and seventy, at the United States court-room in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

And on May sixteenth, A. D. 1870, it being yet a day of the April term aforesaid, the Hon. Samuel F. Miller, judge of the Supreme Court of the United States, assigned to this circuit, presiding and holding said court, the following further proceedings were had, to wit:

TOOF, PHILLIPS & CO., APPELLANTS,
vs.
RUFUS W. MARTIN, ASSIGNEE OF W. P. HAINES & CO., APPELLEE.

286 And now come said appellants, by Garland and Nash, their solicitors, and file herein their assignment of errors, which assignment of errors is in the words and figures following, to wit:

In the United States circuit court eastern district of Arkansas, April term, 1870.

RUFUS W. MARTIN, ASSIGNEE, &C., APPELLEE,
ads.
TOOF, PHILLIPS & CO., APPELLANTS. } Appeal from dist. court.

Come said appellants, and show that in the record and proceedings, as well as in rendering the decree in said cause in said district court, there is manifest error in this, viz:

1st. The said district court found the conveyance made by W. P. Haines & Co., on the 18th day of January, 1868, to said Toof, Phillips & Co., and also the deed of conveyance made on the fifth day
287 of February, A. D. 1868, by Thomas Hough and wife to Frank M. Mahan were fraudulent, the said Haines & Co. being at the date thereof insolvent, and the said Toof, Phillips & Co. had notice of their insolvency, and that the same were made with a view and intent

of hindering and defeating the operation of the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

2d. Said district court decreed a cancellation of said two conveyances.

3d. Said district court vested title in and to the property named in said conveyances in said appellee as such assignee.

4th. The decree of said district court should have been for said appellants and against appellee.

5th. Said district court decreed all the costs of said suit against
288 appellants, wherefore they pray a reversal of said decree with costs.

GARLAND & NASH,
For Appellants.

Filed May 16, 1870.

CHA'S P. REDMOND, *Clerk.*

And afterwards, on the same day, the following further proceedings were had, to wit:

TOOF, PHILLIPS & CO., APPELLANTS.
vs.
RUFUS W. MARTIN, ASSIGNEE OF W. P. HAINES & CO., bankrupts, appellee.

And now come said appellants, by Garland and Nash, their solicitors, and comes said appellee, by Watkins and Rose, his solicitors, and this cause is heard upon the transcript of the record and proceedings of the district court of this district heretofore filed herein, and the as-
289 signment of errors filed in this court, and is argued and submitted to the court, and the court, not being fully advised in the premises, takes time to consider of its judgment herein.

And afterwards, on May 19th, A. D. 1870, it being yet a day of the April term aforesaid, the following further proceedings were had, to wit:

TOOF, PHILLIPS & CO., APPELLANTS.
vs.
RUFUS W. MARTIN, ASSIGNEE OF W. P. HAINES & CO., appellee.

And now, the court being sufficiently advised on the matters submitted on the transcript of the record proceedings and decree of the district court of this district, is of opinion that there is no error in the record proceedings and decree of said district court. It is thereupon
290 ordered that the decree of said district court in this cause be in all things affirmed with costs; and that this cause be remanded to the said district court in order that such proceedings may be thereupon had, as well for execution as otherwise, as may be agreeable to law and justice; and that said defendant recover from said plaintiff all his costs in and about this suit expended; and that process issue to said district court in conformity to this decree.

And thereupon said Toof, Phillips & Co., by their solicitors, Garland and Nash, in open court, pray an appeal from the said decree of the court, which is by the court allowed. And thereupon come said com-

plainants, by their said solicitors, and tender to the court their supersedeas bond in the sum of one thousand dollars, which is examined
291 and approved by the court and ordered to operate a supersedeas in this cause. Which supersedeas bond is in the words and figures following, to wit:

Know all men by these presents that we, Augustus H. Garland, George A. Gallagher, and Charles B. Moore, acknowledge ourselves to owe and to be indebted, and are held and firmly bound unto Rufus W. Martin, as assignee in bankruptcy of William P. Haines and Charles E. Chetlain, under the name of W. P. Haines & Co., in the sum of one thousand dollars, ($1,000 00,) to be paid to the said Rufus W. Martin, his executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by
292 these presents. Sealed with our seals and dated this May 19th, A. D. 1870.

Whereas John S. Toof, Charles J. Phillips, and Frank M. Mahan, under the firm name of Toof, Phillips & Co., have appealed from the judgment and decree of the circuit court of the United States for the eastern district of Arkansas, to the Supreme Court of the United States, in a case in said circuit court on appeal from the district court for said district wherein said Toof, Phillips & Co. were appellants, and the said Rufus W. Martin, as such assignee, was appellee, to reverse the judgment and decree in said cause:

Now, therefore, the condition of this obligation is such that if the above-named Toof, Phillips & Co. shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make good
293 his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue. Sealed and delivered in open court the date above.

A. H. GARLAND. [SEAL.]
GEO. A. GALLAGHER. [SEAL.]
C. B. MOORE. [SEAL.]

Approved.

WATKINS & ROSE, *Atty's for Pl'ff*

Approved.

SAM. F. MILLER.

Filed May 19, 1870.

CHA'S P. REDMOND, *Clerk.*

294 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Charles P. Redmond, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writing annexed to this certificate are true, correct, and compared copies of their originals on file and remaining of record in my office, and constitute a complete record in the case of Rufus W. Martin, assignee of W. P. Haines & Co., vs. Toof, Phillips & Co.

In witness whereof I have hereunto set my hand and the seal of said court this eighth day of July, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States of America the ninety-fifth.

Attest:

SEAL.] CHA'S P. REDMOND, *Clerk.*

Received from Messrs. Garland & Nash the sum of seventy-six dollars, costs of above transcript. July 12, 1870.

CHA'S P. REDMOND, *Clerk*,
Per R. L. GOODRICH.

(Indorsement on cover:) No. 473. John S. Toof, Charles J. Phillips, & Frank M. Mahan, as Toof, Phillips & Co., appellants, vs. Rufus W. Martin, assignee in bankruptcy of W. P. Haines & Co. Arkansas C. C. U. S.
Filed 5th August, 1870.

Supreme Court of the United States.

OCTOBER ADJOURNED TERM, 1871.

No. 473.

Toof, Phillips & Co., *Appellants,*
vs.
Rufus W. Martin, Assignee, etc., *Appellee.*

BRIEF FOR APPELLANTS.

Supreme Court of the United States,

OCTOBER ADJOURNED TERM, 1871.

No. 473.

TOOF, PHILLIPS & CO., } Appellants.
—vs.—
RUFUS W. MARTIN, Assignee, etc. } Appellee.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLANTS.

Rufus W. Martin, as assignee in Bankruptcy of Wm. P. Haines & Co., filed a Bill in the District Court of the United States, at Little Rock, against the appellants, and others, to cancel certain conveyances alleged to have been made in fraud of the *Bankrupt Act* of 1867.

It seems that William P. Haines and Charles E. Chetlain were merchants in Arkansas in 1868, and had been for some time before then. On the 29th day of February, 1868, they petitioned for the benefit of the *Bankrupt Act*, and on 28th of May, of the same year, their petition was granted, and Martin was appointed their assignee. Some six weeks before Haines & Co. asked to be adjudged bankrupts they conveyed to Toof, Phillips & Co. an undivided half of some land owned

by Haines & Co. for the consideration of $1,876.84, which sum was to be credited on a debt owing by Haines & Co. to the appellants. At the time of this conveyance, Haines & Co. assigned to Mahan, a member of the firm of *Toof, Phillips & Co.* a title bond held by them for certain other land which had been occupied by the individuals of the firm of Haines & Co.; the consideration of the assignment to Mahan, of the bond for title, was $7,000.00, which sum Mahan paid in two drafts, one in favor of each of the individuals of Haines & Co. on Toof, Phillips & Co., and these drafts Toof, Phillips & Co. paid. On this property, for which Mahan held the title bond, there was due, of the purchase money, about $740.00, which Mahan paid off, and then took from Hough, who held the fee, a conveyance to himself of that property.

Martin, in his bill of complaint, charges specifically that these transactions were had and carried on in fraud of the *Bankrupt Act*, because:

1st. Haines & Co. were insolvent at the time of these acts.

2nd. These conveyances were made with intent to give preference to appellants, and appellants at the time knew, or had reasonable cause to believe, Haines & Co. were then insolvent.

3rd. The assignment of the title bond to Mahan was for the use of appellants, and in fraud of the creditors of Haines & Co., and made with intention of defrauding them, and in this intention Mahan participated.

On the hearing of the cause on bill, answer, and replication and depositions, the District Court decreed the property conveyed to Mahan and to Toof, Phillips & Co. to the assignee of Haines & Co., and reasonable rents for the property during the time appellants held it, subject to a credit of $740,00, the amount paid by Mahan to perfect the title to the Hough land. From this decree Toof, Phillips & Co. appealed to the Circuit Court of the United States at Little Rock, and that court affirmed the decree of the District Court, and they now appeal to this court.

There are appended to the bill of complaint eleven interrogatories to be answered by Toof, Phillips & Co., which they answered fully in the order propounded. These interrogatories, and the responses to them, will give the court clearly to understand what are the matters at issue here, and will supersede the necessity of making any synopsis of the pleadings at length, and they are inserted.

INTERROGATORIES.

1. At the time of making of the said transfers was not the indebtedness of W. P. Haines & Co. known to be greater than their immediate ability to pay?

2. What was the amount of their indebtedness?

3. What was the actual cash value of their assets?

4. If they were supposed to be solvent, why were these several conveyances made?

5. What was the consideration of the several conveyances, and to whom was the same paid, and how?

6. At the time of the conveyances of the land from W. P. Haines & Co., to Frank M. Mahan, what was the amount of the indebtedness of W. P. Haines & Co. to Toof, Phillips & Co.?

7. Was Frank M. Mahan then a partner of the firm of Toof, Phillips & Co., and was he acting for said firm?

8. What was the amount of the drafts drawn on Toof, Phillips & Co., in payment for the lands conveyed by and from W. P. Haines & Co., and by Thomas Hough, and how were these drafts paid, if ever?

9. After the conveyances aforesaid and transfers aforesaid, what was the state of accounts between them and W. P. Haines & Co. and Toof, Phillips & Co.?

10. How much was paid by Toof, Phillips & Co. to Thomas Hough, or his agent, in order to get a deed from him, and how was that matter settled in the accounts between them and W. P. Haines & Co.?

11. State fully all the facts connected with these entire transactions, and state all you know and every particular thereof.

ANSWERS TO INTERROGATORIES.

1. And to the 1st interrogatory they answer, at the time of making of the transfers defendants do not believe said Haines & Co. were able to pay their debts in money; but they were able to do so on a fair market valuation of the property they owned and of their assets generally, and they were then able to do so.

2. The 2d interrogatory defendants answer that the indebtedness of Haines & Co., at the time named, was about $18,000, as shown to me, F. M. Mahan, by their books.

3. And the cash value of their assets would be, at the time aforesaid, about $37,000 00, in stock, notes, and accounts, mostly secured by mortgage.

4. The conveyances were made because Haines & Co., not having the money to pay the debts of these defendants, were willing to give them this property conveyed to them, and to sell to Mahan that sold to him.

5. The 5th interrogatory these defendants have already fully answered, except as to the amount paid by F. M. Mahan to Hough, to discharge his claim on one piece of property hereinbefore named, which was about $740 83; and the same was paid to Hough, in cash, by F. M. Mahan.

6. To the 6th interrogatory they answer, said Haines & Co. never did convey any land to F. M. Mahan, but Hough did; and at the time the debt due by Haines & Co. to defendants was about $3,992 72, due at date of trust deed, and $13,925 63 for subsequent advances up to January 18th, 1868, and $168 28 advances subsequent to that, making a total of $18,086 60, less proceeds of trust property hereinbefore shown.

7. To the 7th interrogatory they answer, at the time said Hough conveyed said lands to F. M. Mahan, he was a partner of the firm of Toof, Phillips & Co.; but in making said purchase from Hough he acted for himself.

8. To the 8th they answer, the only drafts drawn or given on Toof, Phillips & Co., as before stated, were two for $3,034 54 each, by F. M. Mahan, and the drafts were paid, as before stated, there being two in number.

9. To the 9th interrogatory they answer, that after the deeds and transfers aforesaid, Haines & Co. owed Toof, Phillips & Co. the sum of $5,065 00, of which the sum of $1,191 16 was, after that date, satisfied by a portion of the trust property netting that amount; thus leaving a final balance of $3,874 00.

10. To the 10th interrogatory they answer, they have already stated how much Mahan paid Hough, but the matter never went into the accounts of Haines & Co., as it had no connection with the transactions between said Haines & Co. and said Toof, Phillips & Co.

11. To the 11th interrogatory they answer, that they have stated and make known all they know in relation to the matter and things contained in said bill; and now, having fully answered, they pray to be hence dismissed, with their reasonable costs, &c.

The District Judge construed the answer of appellants to

the first interrogatory as an admission of the insolvency of Haines & Co. at the time of making the conveyances, and ruled the law thus: "If the bankrupts, Haines & Co., could not pay their debts in the ordinary course of business, that is, *in money*, as they fell due, they were insolvent," etc., (see *bottom page 76, Record.*) Appellants openly and fairly admitted in their response, that Haines & Co. could not, at the time named, pay their debts in money, but they alleged their available assets were largely in excess of their debts. If inability to pay their debts *in money* constitutes insolvency within the meaning of the *Bankrupt Act*, then Haines & Co. were insolvent at the time these conveyances were made, and appellants admit it, and never pretended to deny it, and if their inability in this made them insolvent, of course appellants not only had reasonable cause to believe they were insolvent, but they actually knew they were. So that, if the District Judge's view of the law be correct, this case ends right here—there is no more of it. It is then important to determine this question at once. and before any effort is made to unravel, upon the proof, the true condition of the financial affairs of Haines & Co.

Then did the inability of Haines & Co. to pay their debts *in money*, as they fell due, constitute insolvency on their part? I can not think so; and I must believe the District Judge was mistaken in his ruling on this point. The charges in the bill, upon this particular point, are based upon sections 35 and 39 of the *act*. What, then, does *insolvency* used in these sections mean? When an author or a statute uses a word of known and fixed meaning, and the context does not show that the word is used in a new or different meaning from the one commonly attached to it, its known and accepted meaning must prevail.

Sedgwick Construction, 262, 263.

The Fashion vs. Ward., 6 McL.: 152.

Love vs. Hinckley, 1 Ab., 436.

According to the character of the text before us, we are

obliged to take words, either in ther common adaptation in daily life, or in the peculiar signification which they have in certain arts, sciences, sects, provinces, etc., in short, we have to take words according to what is termed *usus loquendi*. The *Bankrupt Act*, in employing *insolvency*, has nothing in it to intimate that this word is used in any sense different from that attached to it in England and in our States; but on the contrary, it is more than a presumption that it is used in this act in the sense in which it was always employed in England and in the States. The meaning there attached to it must be according to the *usus loquendi*.

Burrill defines an *insolvent* to be one who cannot pay, or who does not pay, his debts—one who is unable to pay his debts, or whose debts cannot be collected out of his means by legal process; *2 Burrill's Law Dict.*, (*Insolvent.*) *Worcester*, in his Dictionary, adopts this definition. By the universal acceptation of the word *insolvent*, in this country and in England, if a party's available means—means that he can use in paying his debts, exceed those debts, he has never been deemed insolvent: *James on Bankruptcy*, (*notes to sect. 35*) *p 153–183: Avery & Hobbs, Bankruptcy, 261, 289, 290: Burrill on Assignments, 38–41: 4 Hill*, (*N. Y.*) *652: Buckingham vs. McLean, 13 How, 151–167: Jones vs. Howland, 8 Mete.*, (*Mass.*) *377.*

If the question were a new one under the present *Bankrupt Act*, I think the rule of construction stated, in connection with the received meaning of the word discussed, would be conclusive that the law was improperly decided by the court below on this point. But how has it been held by courts in which the question on this very act has arisen?

In the matter of *Randall & Sunderland, 3 Bk. Reg., 4–5*, the court held: "If a man's debts cannot be made in full out of his property by levy and sale on execution, he is insolvent within the primary and ordinary meaning of the word, and particularly in the sense in which the word is used in the *Bankrupt Act*." It is perfectly plain from this language,

that if by execution a party's debts can be made, he is in no sense insolvent within the meaning of the *act;* and it completely overthrows the idea that a man must pay, or be able to pay his debts in money.

In the matter of *Drummond, 1 Bk. Reg. 10–11*, the court held, if Drummond supposed he had assets enough to pay all his debts, though in point of fact he did not have, and could not pay them, he was not insolvent within the meaning of the *act.*

In the matter of *Cowles*, 1 Ib. 42–3, the court laid particular stress upon the value of the party's assets, as compared with his debts, and did not regard his mere inability to pay in money, or the amount of money he may have had, and in alluding to the case of *Curtis vs. Leavitt, 15 N. Y. Rep.*, which had been cited by counsel for *Cowles*, said: "The banking institution in that case, although embarrassed, had, at the time the trusts were created, assets over and above its liabilities, and the question decided by the court was, that such embarrassments did not create such a state of insolvency as was contemplated by the act with which it was charged with violating." This is just the state of case here. While on all hands it is admitted that Haines & Co. were greatly embarrassed, their assets, it is asserted by appellants, overbalanced their liabilities, and this was not insolvency.

In the matter of *Black & Secor, 1 Ib. 82, Judge Blatchford*, after discussing the difference between the acts of 1841 and 1867, on this head, holds that insolvency means an inability to pay as debts become due and payable, whereby the debtor will be broken up. While their inability to pay debts in money does exist, yet the business of Haines & Co. was not broken up, nor suspended until some time after. Then under the ruling of Judge Blatchford these parties were not insolvent when these conveyances were made.

In Tucker vs. Opelousa, etc. Railroad, 3 Bk. Reg. 31, this very question came before Judge *Durell*, and he held expressly, that where the whole credits and property equal the debts,

the party is not insolvent; and as he found the assets of the Company in excess of its liabilities, he would not hold the Company to be insolvent.

The very utmost length that the court can go in this matter, is to make this inability *prima facie* evidence of insolvency, as was held in *Graham vs. Starke, 3 B'k. Reg. 92.*

Upon what other ground, or for what other reason has it been held, that because a man, actually insolvent, may continue his business for years by renewals, and extensions and indulgencies on the part of his creditors, and ultimately not only pay all indebtedness with interest but achieve success, his present inability could not force him into bankruptcy? *Doan vs. Compton, 2 B'k. Reg. 182.*

If the inability to pay in money constitutes insolvency, of course it is sufficient for one moment after the debt is due and the party is not able to pay, but it is expressly held, a temporary want of *money* to pay notes coming to maturity, does not constitute insolvency, for this would be tantamount to holding that whenever a trader suffers a note to go to protest for want of funds in hand, wherewith to pay, he can therefore be judged insolvent—this would be an extreme view. *Hardy vs. Binninger, 4 B. Reg., 77.*

If even there are debts due which the party is unable to meet, yet if by arrangements made with his creditors—their promises to aid him—his assets over-balancing his debts—his credit good, and his prospects in business for the future encouraging, he still goes on in his business, he is not insolvent: *Patter vs. Coyeshall, 4 B. Reg. 19.* The ruling in this case relieves Haines & Co. of all charge of insolvency when these conveyances were made.

When we look into the objects and policy of the *Bankrupt Act*, we are far from deducing any such rigid and harsh conclusion as the one adopted by the court below. While it is true, one of its objects was to distribute the estate of a debtor equally and justly between his creditors, it never was the intention to force persons into bankruptcy, whether or

not, and to compel all traders who might be embarrassed to resort to the *Bankrupt Act*. The law evidently has regard to rights of creditors as well as debters—both alike. It surely must be the policy of the law to permit all traders, though behind in their engagements, to keep up their business and pay out in full. Take the case decided by Judge *Durell;*—if that proceeding had been sustained, the *railroad company* would probably have been broken up, its creditors paid but a small dividend, when its assets were more than its liabilities, and therefore solvent. The construction of the court below applied in Arkansas, I venture the assertion, would bring into bankruptcy nine-tenths of the traders in her limits—yes, a half dozen would not escape. Look at it. Our merchants and traders carry on their moneyed transactions by exchange with St. Louis, Louisville, New York, and other cities out of the State, and in fact, comparatively speaking, there is but little money on hand with them. A is a large merchant at Little Rock, having $30,000 stock—marketable and available, and choses in action to the amount of $20,000, that are good,—he owes a debt of $10,000, and gives a draft, and it is protested, or he does not pay the $10,000 in money, he is insolvent, and therefore he must go into bankruptcy. This cannot be. If this is the meaning of the *Bankrupt Act*, its name is not too strong for it, for now nearly the entire trading community in Arkansas is bankrupt to the core. The *Bankrupt Act*, like all laws, was made with a view to remedy some existing troubles, and to give some relief, and to meet the exigencies and wants of the people for whom made. While it was meant to relieve debtors upon as fair a basis as possible to the creditors all, it surely did not intend to force and plung persons into bankruptcy. With our system in Arkansas of credit, exchange, etc., who of the trading community can escape bankruptcy? And it is not to be said the law makers ignored these facts existing in the country. On the contrary, if we did not know the duty of the legislators required them to observe and recognize the condi-

tion of things in the country when this law was passed, we know from the law itself they did pay attention to these local matters, and whenever they could, regard them—as for example, in respect to liens in the State courts—and in the matter of exemptions, etc., I dare say, it was because of this view Judge *Durell* held that insolvency must be tried by the law of Louisiana, and certainly he was correct.

The Louisiana *Code, p. 274, Article 198*, defines insolvency to be what I have asserted it to be, and it is in keeping with the meaning given in all the books.

Under the *Insolvent* law of Arkansas, *Gould's Dig., p. 612, chap. 90*, a party in taking the benefit of the Act, had to make up and swear to a schedule of his assets and his debts, to show by comparison of them, whether his debts were more than his assets, and not whether he had more actual money on hand than his debts amounted to.

When the estate of a deceased person in this country is termed insolvent, it is not meant the estate can not pay its debts as they fall due, in money; but that on the balancing of debts and assets, the debts are in excess. This is all there is in the question. And the text of the Act gives forth nothing to justify the meaning adopted in the court below.

There can be nothing in the whole *Bankrupt Act* more important to be tested by local or State laws and customs, usages of business, etc., than insolvency itself. Indeed, it has been held that the courts in passing on this question should adopt the usages and customs in mercantile affairs in the particular locality of the business. What is insolvency in New York, Boston and Philadelphia, and other commercial centres, is not insolvency in small inland or country towns: *Driggs vs. Moore et el., 3 B., Reg. 149.* With a due and proper regard to all these matters,—these surroundings of Haines & Co, it is utterly out of the question to pronounce them insolvent when these transactions were had, merely because they could not pay their debts in money.

But I am relieved of all this labor by an article in the

Boston Law Review, April, 1870, p. 417, et seq., on this very question. It is unanswerable and conclusive as to the legal question, both upon the construction of the law itself by its own terms, and from the policy of the law. I call the attention of the court particularly to it, and the cases referred to. The position assumed for appellants is, in this article, sustained to the very last, and upon it they willingly rest the decision on this point.

In the cases referred to by the District Judge, to sustain him, (see page 78, Record), the fact of insolvency is assumed —the very one here in controversy. They start with insolvency admitted, which is not true here. That is the matter in dispute. This court will see this to be so in the cases referred to by the District Judge, except a previous one decided in the same court, of *Rison vs. Knapp*, the record of which is not before this court, nor have I seen it. I have entire confidence that this court will, upon this point, after a careful review of the more recent authorities, correct this mistake, into which the court below so unfortunately fell.

If this court concurs with me, then the duty of examining the case upon the facts and law further, is to be performed.

No controversy exists as to the fact of the time within which these conveyances were made, whether placed upon the four months, or the six months clause of the *Bankrupt Act*. Believing then, that under the law the most that can be made of the inability of Haines & Co. to pay their debts in money, as they became due, is a *prima facie* case, let us start from this point and see how appellants meet, in the proof, this state of case.

When the witness, Mr. *Frisbee*, (*page 33, Rec.*) says that in December, 1867, he aided in making up a balance sheet, and he found Haines & Co. were not able to pay, he states a fact, if limited to paying in money, appellants do not deny; but if he states that their debts exceeded their property in

value, he is not sustained by the other witnesses, or by the circumstances running through the whole case.

James H. Patterson, an attorney living where Haines & Co. were doing business, and who had claims on them, states (p. 38–9, Rec.) that he had confidence in their ability to pay; and during, or about, the time alluded to by Frisbee, they did pay him on claims he held for collection.

The answer of defendants in the court below, states most directly, in response to an inquiry on this point, that the assets of Haines & Co. were in excess of their liabilities by $16,000.00. This estimate is made good by Mahan, (F. M.) in his deposition (page 57–60, Rec.) and besides this, he expressed the utmost confidence, from an examination of their books, of their ability to go on in business and pay out; so much so, that he was willing to sell them more goods, and to give them more indulgence:—he says they had cotton on hand then, and their credit was good:—and as the strongest proof of this, Mahan is willing, and instructs their agent at Augusta, McCurdy, to go security for Haines & Co. in their suits. (See McCurdy's dep. p. 35, Rec.) Mahan even after all this, released cotton attached in New Orleans to aid these parties, (see Mahan's dep., and also Toof's dep., p. 65, Rec.) and the first intimation they received of their suspending or intending to go into bankruptcy was by letter of 25th February, 1868, from them, five weeks after these conveyances:—this is shown by Mahan and Toof. Indeed, they say they never doubted of the credit of Haines & Co. till then, February twenty-fifth, eighteen hundred and sixty-eight.

Chetlain (see his dep., p. 29, Rec.) shows their liabilities were less than their assets: and on *page 30*, he shows that their creditors in Cincinnati had agreed to extend time till the end of that season, say March or April, 1868. The deposition of *Haines*, (p. 69, Rec.) shows too all these facts, as to their liabilities and assets, and their hopes of being able to go on with their business successfully. *Chetlain and Haines* both swear they made these conveyances in good faith:

and they show they continued to pay debts of the firm, till within one month of their going into bankruptcy. Here then Haines & Co. are found in a good and hopeful condition to go on, and upon the facts then existing, with all reasonable calculation they would be able to keep up. What changes this state of affairs, or what causes them to apply for bankruptcy? Other parties owing them, and who were supposed reasonably good, *bankrupted on them*, (see letter of Haines & Co., February 25, 1868, Rec. p. 44,) and their losses of cotton through the *Freedman's Bureau*, amounting, according to the testimoney of Chetlain and Haines both, to, at least, $6,000.00. This loss of cotton was, in fact, the loss of appellants, who had agreed on the faith of this cotton in part, to "carry them through." These two facts, together with the one of shipping cotton by Haines & Co. to New Orleans, contrary to the agreement made by them with Mahan, caused appellants to decline advancing or selling to them again—and certainly these reasons were sufficient. And more than this, the *Bankrupt Act* does not condemn the action of a debtor in arranging with his creditor so as to keep up his business, and pay all his debts, and with this arrangement both Haines and Chetlain swear they had every confidence of being able to carry on with success their business. According to the testimony, the losses by cotton alluded to, and losses by persons owing them going into bankruptcy, exceeded the amount their assets overbalanced their debts in January, 1868, and this brought them to bankruptcy. *Haines shows* most conclusively, that while they were paying debts in the early part of January, 1868, their condition did not change from then to the time these conveyances were made.

I say, by a fair and just summary of all the facts in the case, the available assets of this firm were in excess, by at least $16,000.00, of their debts—and they had every hope and encouragement to go on, and that they would be able to go on—and therefore they were not insolvent, or in contemplation of insolvency when these conveyances were made:—

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and so far from appellants knowing or having reasonable cause to believe they were insolvent, they had every reason to believe the reverse, which they did believe. In addition to the depositions referred to, the court is asked to read carefully the two depositions of G. G. Mahan, (p. 61–6, Rec.)

The District Court, on the pleadings and depositions, before Haines' deposition was taken, was unable to decide the case, and ordered Haines' deposition to be taken on interrogatories framed by the court and filed in the cause, (see p. 67–8, Rec.) and after Haines' deposition came the case was decided. I take it for granted that Haines' deposition settled the case, as far at least as the facts upon their financial condition were concerned. But if the law as to the inability of a party to pay, is correctly given by the court below, Haines' deposition was not needed, nor in fact was any deposition required, as the fact upon that point was distinctly and broadly admitted by the answers. The order to take Haines' deposition to enable the court to determine the questions involved, may be taken as a circumstance of some weight, to show that the Judge himself was not over confident at that time in what he afterwards ruled on—the question of inability to pay debts in money.

The deposition of Haines is very important, and it so fully sustains appellants' side of this case, that I will insert it in full here, and ask a most careful perusal of it.

HAINES' DEPOSITION.

Answer to 1st Interrogatory. I think our indebtedness was between thirty thousand dollars and thirty-three thousand dollars. I do not now recollect the exact amount, but my schedules on file will show. I had, when the schedule was made up, my books, from which the exact amount could be ascertained, but when I left Augusta, Arkansas, which was in the month of March. A. D., 1868, I left all of the books and papers relating to the business of the firm with my late partner, Charles E. Chetlain, and I have not seen them since. The greater part of our indebtedness had matured at that date. I do not now recollect but one debt, (that of Walker & Bro.,) that was not ma-

tured at that date. The schedule will show both dates and amounts, and how long over-due.

Answer to 2d Interrogatory. Said firm did not, towards the last of its existance, meet its paper when due. I cannot say exactly when it first failed to meet its paper, but I think the whole indebtedness, except Walker Bro.'s, was, on the eighteenth day of January, 1868, over-due and unpaid.

Answer to 3d Interrogatory. Said property consisted of real estate, merchandise, notes, and book accounts. I cannot say, without reference to the books of the firm, or the schedules, what was the precise amount, nor do I know their actual value. There were, also, some mules, horses, cattle, and farming tools, on a portion of which Toof, Phillips & Co. had a deed of trust.

Answer to 4th Interrogatory. None, except a double dwelling-house, one-half of which belongs to each of the partners—one-half to William P. Haines, and one half to Charles E. Chetlain. This was not considered as belonging to the partnership, but one-half to each individually, as above stated. The entire value was about seven thousand dollars: on the interest of each about three thousand and five hundred dollars.

Answer to 5th Interrogatory. Charles E. Chetlain was owing at one time twenty-five hundred dollars, and some interest—I do not know how much: besides this I know of no individual debts.

Answer to 6th Interrogatory. The firm of William P. Haines & Co. were indebted to Toof, Phillips & Co., of Memphis, Tennesse. That firm consisted of John S. Toof, Charles J. Phillips and Frank M. Mahan, and were our largest creditors. We did make payments to said firm after January 1st, 1868. I cannot say, without reference to our books, whether we sent said firm any drafts other than the ones hereinafter stated, or whether we shipped them any cotton on account after the first day of January, 1868. My partner and myself sold the dwelling house before referred to, to F. M. Mahan, a member of said firm of Toof, Phillips & Co., on or about the 18th of January, 1868, for about seven thousand dollars, as near as I can now recollect. The books of the firm of William P. Haines & Co. will show the amount. Said Mahan gave each of us a draft upon Toof, Phillips & Co. for about thirty-five hundred dollars. These drafts were to be forwarded to Memphis, to Toof, Phillips & Co., and the firm of William P. Haines & Co. were to be credited with the amount of those drafts. This arrangement was carried out. I forwarded the drafts to Toof, Phillips & Co. shortly afterwards, and requested them to place them to the credit of William P. Haines & Co. At the time of the sale of the dwelling-house above mentioned, we also sold the individual half of a store-house, then occupied by us, to Toof, Phillips & Co., for

about eighteen hundred dollars, as near as I now remember. My partner and myself executed a deed of the store-house property above mentioned, and delivered the same to said F. M. Mahan on or about the said eighteenth day of January, 1868. The eighteen hundred dollars for which we sold the one-half of the store-house was to be placed to the credit of William P. Haines & Co. The legal title of the dwelling-house was not in us. We held a contract for the property, and were indebted seven hundred dollars upon the lots. The contract was assigned to said F. M. Mahan, on or about the 18th day of January, 1868, and he assumed to pay the amount still due upon the contract. The foregoing is all that I remember to have been paid Toof, Phillips & Co. After January 1st, 1868, the firm of William P. Haines & Co. gave the firm of Toof, Phillips & Co. a deed of trust upon some personal property, as horses, mules, cattle, &c., and I have been told that, after we filed our petition in bankruptcy, they sold the property, but how much they realized I never knew.

Answer to 7th Interrogatory. William P. Haines and Charles E. Chetlain did convey certain dwelling-house property and the undivided half of a store-house property, as stated in my 5th interrogatory, and it was agreed by said Mahan, on behalf of Toof, Phillips & Co., that we should receive further credit and assistance from Toof, Phillips & Co. to enable us to go on with our business as a firm.

Answer to 8th Interrogatory. The parties to the said contract were the firm of William P. Haines & Co., on one hand, and Frank M. Mahan, on the other. Frank M. Mahan acted for the firm of Toof, Phillips & Co. I have already stated what the agreement was in my answer to the sixth and seventh interrogatories.

Answer to 9th Interrogatory. Frank M. Mahan knew at the time about how we stood. We made the statement to Mr. Mahan that we believed we had sufficient means due us to pay our indebtedness. I do not remember of Mr. Mahan's making any examination of our books at the time. The books did disclose exactly how we stood, so far as books could do. We could, and did not, know ourselves exactly as to what could not be collected on the indebtedness to us.

Answer to 10th Interrogatory. Said firm of Wm. P. Haines & Co., after the arrangement with Toof, Phillips & Co., above mentioned, had sufficient assets, as appeared by their books, to pay all their debts. On or about the first day of January, 1868, I struck a balance sheet of the assets and liabilities of the firm of William P. Haines & Co., and at that time I felt satisfied that we could pay all of our indebtedness. Our financial condition did not change between the first of January, 1868, and the 18th of January, 1868. As well as I now recollect, Toof, Phillips & Co. had not, at the time of this arrangement with them, on the 18th of January, 1868, any intimation of

any want of assets on our part to pay our other creditors, to my knowledge.

Answer to IIth Interrogatory. They did at the time expect to continue in business. That expectation was grounded on the further credit and assistance made by Frank M. Mahan on behalf of the firm of Toof, Phillips & Co. On their refusal to give further credit or assistance, we were compelled to stop and go into bankruptcy. This promise of Frank M. Mahan was the sole inducement to us to convey the store and said dwelling-house to said Mahan for said firm. Many of those who were indebted to the firm of William P. Haines & Co. went into bankruptcy, and thus cut off our reasonable hopes of realizing their debts after the 18th of January, 1868, and before the 28th day of February, 1868. During the cotton-planting season of 1867 we had made advances to a large amount, to parties engaged in cotton-planting, and had been secured by liens upon the cotton crops. We had taken some of this cotton into our possession prior to the 18th of January, 1868, and a partion of it had been seized by the agent of the Freedman's Bureau. I believe there was, also, cotton, upon which we had liens, that was seized by the agent of the Freedman's Bureau after the 18th of January, 1868. When Frank M. Mahan was there, on or about the 18th of January, 1868, he and myself went to the agent of the Freedman's Bureau, and, after consultation with him, he gave us such assurances that both Mr. Mahan and myself fully believed that we should not lose any of this cotton. The agent of the Freedman's Bureau did not keep his word in regard to that matter, and after the eighteenth of January, and prior to the filing of our petition in bankruptcy, we lost this cotton. Our loss from this source alone amounted to several thousand of dollars, how much I cannot now state, but our losses from this source were entirely unsuspected on the 18th of January, 1868, and materially affected our resources. As I now recollect, we lost between six thousand dollars and seven thousand dollars of claims, notes and accounts, by parties going into bankruptcy, between the 18th of January, 1868, and the 28th of February. We lost more than this, but I cannot now recollect the amounts. The schedules filed by parties who filed petitions in bankruptcy in the District Court of the United States for the Eastern District of Arkansas, wherein William P. Haines & Co. are scheduled as creditors, will show what we lost through this source.

Without repeating any more of the testimony, which the court will examine at length, I think it may be safely said we have reached the fact that when these conveyances were made, they (Haines & Co.,) were anything but insolvent.

Appellants must be permitted to protest against the schedules of Haines & Co. being used as evidence against them, as to the condition of their assets. These schedules were made up by Haines & Co. without the knowledge or presence of appellants, and are merely *ex parte* statements, which, upon no principle of law, can bind appellants. Besides this, the schedules are flatly contradicted by both Haines & Co. when they come to depose. And then in their schedules, the debt to Toof, Phillips & Co. is put down at $20,000 00, when all the proof and the answer of Toof, Phillips & Co. show it was but $3,874 20, and all that was proved against their estates by appellants; and the exact and true amount of this indebtedness the court will bear in mind, as very important in estimating the condition of Haines & Co., and in determining whether they were insolvent. These schedules are not properly evidence in this case against appellants.

Were these conveyances made with a view to give a preference to appellants over the other creditors of Haines & Co?

There is no dispute whatever that the firm of Haines & Co. owed every dollar of the debts for which these conveyances were made, and more besides, to the appellants, and Haines & Co. did not give or convey to them one dollar's worth of property more than they owed appellants. So that Haines & Co., while in business with more assets than liabilities, and having every hope of being able to keep up, provide to pay an honest and just debt in an honest and just way. And so firmly impressed were Haines & Co. of the fairness of the whole transaction, that they convey even their homesteads to Mahan, one of the appellants, which were not liable for their debts. See what G. G. Mahan says of this as coming from Haines, (p. 67, Rec.) This of itself is a most potent circumstance to convince any one that *bankruptcy* or *insolvency* at that time was most remote from their thoughts. Had they

intended this course, or had they not believed most strongly they were solvent and solid, they would not have conveyed their homesteads: and if proof were needed on this point, we have it, that at last when they were compelled to bankrupt, they then claimed their homestead in their petition.

The privilege of homestead is one that Haines & Co. could waive, and waiving for a small or a large consideration does not make them liable to the charge of fraud, in fact or in law. Surely the *Bankrupt Act* that exempts the homestead does not care what Haines and Chetlain might do with theirs, since it is their own privilege that is secured, and which they may waive or surrender, if they please.

And in paying this debt, or attempting to pay it, Haines & Co. did not convey all their means, all their assets, but only a portion, and the smallest portion. Then there can be no charge of fraud, or of intention, on either Haines & Co. or appellants, to defeat creditors, or to delay them, or in the least to do a wrong as against the *Bankrupt Act*. The former *Bankrupt acts*, the present one, as well as the law here and in England, under any and all statutes as to fraudulent conveyances, permit this kind of transaction, and the reported cases give numberless examples of them.

James Bankruptcy, 153–164 et seq.

Phœnix vs. Day, 5 Johns. Rep., 412: 1 Ib. 370.

Harrison vs. Story, 3 Cranch, 301.

Locke vs. Winning, 3 Mass., 325. 13 How, Sup.

Unless this had been a conveyance of all their means to appellants, or more means than were necessary to pay the debt, it was not condemned by the *Bankrupt Act: Grow vs. Ballard, 2 B. Reg. 69; Ex parte Smith, 3 Ib. 98.*

In this transaction Haines & Co. were only providing means to pay certain indebtedness, whereby they would be enabled to pay, without sacrificing their property, all their other debts. There can be neither fraud in law nor morals in this. It cannot matter how the payments, or the adjustment of accounts were made as between Mahan individually, and the firm of

Toof, Phillips & Co., the only questions are, did Haines & Co. owe the debts, and was this property conveyed in discharge of the debts? The case of *Rosenfield, Jr., 2 Bk. Reg., 49*, was a credit of a debt on a sale of land to the creditor, and it was sustained.

To constitute a preference here, Haines & Co. must not only *have been* insolvent, but they must HAVE KNOWN themselves to be, and must have intended to have given, and *actually* did give preference to appellants. *Miller vs. Keys, 3 Bk. Reg. 54.* Haines & Co. believed they were solvent—and according to my theory of the law they were not insolvent—and they did not give any preference to Toof, Phillips & Co.; they swear they did not *intend* to give any preference to them, and as the best evidence in the world of this is, they paid other debts about the time and after these conveyances were made.

But Toof, Phillips & Co. and others, believed they (Haines & Co.) were solvent. Haines & Co. both swear they believed they were! Then what is the law? "If a debtor honestly believes himself solvent, and pays a just debt, such payment cannot be considered fraudulent though bankruptcy ensue." *Morgan, Root & Co. vs. Mastick, 2 Bk. Reg. 163*, citing *Jones vs. Howland, 8 Mete. Sup;* with approbation. This is a full and complete response to the question of preference, and places this transaction entirely beyond impeachment under the *Bankrupt Act*. If this does not, what will be said of the following, which has reference to the intention of the party to give a preference:

"This intent must be an intent on the part of the debtor; and unless the debtor at the time knew that he was insolvent or contemplated insolvency, he could have no intent to give a preference to one creditor over another. If a person, while paying one creditor, honestly supposes he is able to pay every creditor, there can be no intent to give a preference." (*In re Diblee et als, 2 B. Reg. 185.*)

Haines & Chetlain promised to pay Toof, Phillips & Co.,

honestly supposing (as they and others swear,) that they were able to pay all their creditors, by making this arrangement.

As to the matter of purchase by Mahan of Hough, this is sufficiently explained in the testimoney of Mahan, and in his response to the interrogatories of the assignee. He is not contradicted or impeached, and there is nothing in the Record that casts any suspicion on his statement. Of course this court may say, it will not believe him, but then by rules of evidence he must be believed. Haines corroborates Mahan as to this, (See Haines' dep. in ans. to 6th interrog.)

And Chetlain says, by payments made by Mahan on this purchase, they, (Haines & Co.) were enabled to make payments and receive credit on their debt to Toof, Phillips & Co., which they justly owed, and which the law said they were right in trying to pay. Mahan bought and paid for it with his own money, and Haines & Co. received the benefit of it.

And again, Mahan bought this land of Hough, who held the legal title to it; *Haines* and *Chetlain*, individually, having only an equity in the property. Hough's claim upon it was first and paramont over all others; and until this was satisfied, the creditors of Haines & Co. had nothing to do with the property, and they did not afterwards certainly, as this was the property of the individuals composing the firm of Haines & Co., and exempt from their debts, (individual and firm) both under our State law and the *Bankrupt Act*. Mahan discharged the claim of Hough, and paid *Haines* and *Chetlain* individually for their claim. (See the drafts, p. 43, Rec.,) which gives these individual members that much more means to carry on their business for the benefit of their other creditors; and therefore instead of being a wrong or a fraud upon their other creditors, this transaction was an actual benefit to them.

It is impossible to say there is unfairness or fraud in this arrangement, without ignoring all the facts in this case.

There is nothing then to set aside this transaction.

No case can be presented involving many transactions of a debtor with many creditors, in which we may not easily, from isolated facts, expressions here and there, and detached circumstances, come to the conclusion that fraud, fraud in every sense of the word, has been committed at every step. But in passing upon such a case, we must take all the facts, expressions and circumstances together, and judge of them as a whole. Passing upon this case in that way, no fears are entertained on behalf of the appellants, of the conclusion this court will reach. Especially is this so, when we reflect that no law—*Bankrupt Act*, or any other—presumes fraud, or sanctions a conclusion establishing it, save by proof irresistible and conclusive; and I am persuaded, upon a proper interpretation of the law, there is nothing disclosed here in violation of the *Bankrupt Act*, and all appellants ask, is a thorough and careful review of the whole case by this court, and they will be content.

A. H. GARLAND,
For Appellants.

A BRIEF.

IN THE CASE OF

Wm. F. Phillips, Exr. &c.

VS. 241

Martin Maginnis.

GAZETTE PUBLISHING COMPANY.

Brief for Appellee.

IN THE
Supreme Court of the United States.

TOOF, PHILLIPS & CO.,
vs.
RUFUS W. MARTIN, as assignee of
W. P. HAINES & CO.

NO. 241.

BRIEF FOR APPELLEE.

The firm of the appellants is composed of Toof, Phillips and Frank M. Mahan, the latter being the active agent in the transactions mentioned in the proofs. The firm of the bankrupts was composed of Haines and Chetlain. The former firm was doing a mercantile business at Memphis, Tennessee, and the latter a like business at Augusta, Arkansas, when our attention is first called to them. In the fall of 1867 the affairs of Haines & Co. were not promising. They never improved. Owing then over fifty-five thousand dollars, they never afterwards paid any more than five hundred dollars on their debts; excluding of course the conveyances to the appellants. Nearly all their debts too were on commercial paper overdue. On the last day of February, 1868, they went into bankruptcy. That they were insolvent during all this time is most apparent. No sane merchant, with a knowledge of one-half of the facts revealed, would have given them credit; and it does not ap-

pear that any merchant, or other person, did give them any credit during this time, say from the first day of November, 1867, until the day of their bankruptcy. The principle of self-preservation, cultivated into a high degree of commercial shrewdness, does not seem to have been wanting in the appellants. They sold the bankrupts goods during this period of the decline of their fortunes; but they gave them no more credit. After the first day of November, 1867, they sold to Haines & Co., and paid out cash, etc. for them, to the amount of $2533.88, and during the same time they received from them cotton, which was sold and placed to their credit, amounting to $4977.05. On p. 48 tr., is an error, no doubt unintentional, which might mislead. This is the credit side of the account. It begins, "By proceeds" etc., but half way down the column it changes and reads, "To proceeds." One might think that this was a change from the credit to the debit side of the account; but such is not the case. The column of figures is not added up, as it might have been; but adding it ourselves we find that all the items on this page make up the sum of $4,977.05, and deducting this from the aggregate of debits claimed on p. 47, $13,930.54 it leaves the same balance as is claimed, that is, $8943.49 showing that all the items on p. 48, however stated, are items of credit; and showing also that during the decline of Haines & Co., the appellants not only got pay for everything charged them, but managed also to save above $1,000 over to go on the pre-existing debt; so that neither they nor any one else gave Haines & Co. any credit after November first: a time at which it was undoubtedly understood that their embarrassments were hopeless.

On the subject of the previous debt matters were precarious. The appellants were doing very well however under the circumstances. During the fall and winter they got all the money that was paid on any old debt by the bankrupts, except the sum of about $500, above mentioned (p. 30.) The way they managed to secure a result every way so desirable, was by promising Haines & Co. to "carry them through" (p. 30), a phrase to which perhaps they attached a different meaning from that with which it was received by the bankrupts; a misfortune to which language is subject even when most skillfully employed. As early as November, Chetlain went to Cincinnati, and publicly confessed insolvency, and sought an extension of time on the paper of his firm. In the last of December and first of January, matters reached a crisis; creditors sent agents to demand payment, and no payment was made; all the time the appellants, whether through a feeling of friendship for Haines & Co., as unusual in such matters as it would be highly creditable to all parties

concerned, or from the more ordinary motives of self-interest, had an agent on the ground, in order to ascertain from time to time exactly how matters stood, and to report promptly every change that might occur; and this agent wrote them to look to their interests, as his conviction was that it was doubtful about their being able to collect their debt. About the first day of January, the sheriff levied an execution on the interest of Chetlain in the goods on hand. No money could be raised to pay off the judgment. The house remained closed until about the 15th of the same month, until the levy was "dissolved" (p. 29,) perhaps by one of the bonds of which McCurdy speaks. (P. 35.) It would have suited neither the feelings nor the interests of the appellants to be absent at such a time; nor could they trust a matter of extreme delicacy to the judgment of an agent, who had already intimated a want of that capacity which the emergency required: so Mahan came in person; (31, 35) not deficient in all necessary information, for Chetlain had before told him that the firm could not pay out; (28) and he knew that they were not "able to pay their debts in money," that is, in the precise thing in which the debts had unfortunately been made payable. (*See answer, p.* 24.) According to the theory of the appellants this knowledge had no influence on Mahan that can be traced in his subsequent conduct; though that conduct would seem sadly to need some explanation. By calling he was a merchant. It does not appear that he was a dealer in lands. Yet he at once became deeply enamoured of investments in real estate. Not desiring to be the principal person in a small village, he bought only "the second best house." One might have supposed that he would have looked around, and bought where he could make the best purchase; but he seems not to have done this; perhaps, from having no experience in dealing in real estate, he never thought of it. But there was a motive for buying this particular property which applied to no other; and one equally creditable with all others exhibited by him throughout the transaction; he desired to assist Haines & Co. by enabling them to convert their real estate into money so that they could go on with their business; and this, conspiring with the longing to make a good investment, induced him to buy. Certainly after this no one will have the audacity to assert that human actions are not determined by motives. But he was deceived at every point. The property was not a good investment; on the contrary he gave double its value. The benevolent object which he resolved to accomplish was equally frustrated. Instead of using the money arising from the sale, by converting the drafts which they received into cash, and applying that to the payment of their more pressing debts, Haines & Co. sent the drafts to the appellants to be ap-

plied in payment of so much of their old debt, and left the creditors who were less indulgent wholly unappeased. This was an act of madness on their part, and showed that they did not properly appreciate the kindness and freedom from selfishness which Mahan had displayed. Seeing however that they had done this, thereby thwarting the principal object which Mahan had in view, it may seem strange that the appellants did not return the drafts to Haines & Co., with such an explicit statement of their design as would have enabled Haines & Co. to carry it out, to repair their losses, and to achieve an ultimate success in business. Whether this omission were through an oversight, or because the other members of the firm of Toof, Phillips & Co. were not aware of the real object of Mahan, which perhaps he concealed with that want of ostentation which increases the value of a virtuous deed, no where appears. It is only shown that the drafts were placed to the credit of Haines & Co., and after this it was of course too late to correct an error which must sacrifice the last hope of relief which could be entertained in their behalf. The disappointment and regret which Mahan must have experienced on the occasion of such an event must have been unusually painful. We draw a veil over it.

It is true that both Haines and Chetlain swear that there was an express agreement that the purchase money evidenced by the drafts should be placed to their credit with Toof, Phillips & Co. But Mahan swears the other way. In this view we only regard what is said by Mahan; trying to see the surroundings with his eyes, as near as may be. His first reflection would naturally be that he had lost everything for which he had striven; the property was not "a good investment," and Haines & Co. were floundering in difficulty the same as before; but pondering the matter a little he would perceive that in a universe of compensations, virtue rarely goes wholly unrewarded; for as a most unexpected and no less gratifying result, it had turned out that the debt of Toof, Phillips & Co. was in a great part paid, whilst the other creditors were nearly wholly unprovided for. This must have displayed in a beautiful light the truth of the axiom that honesty is the best policy, and proved conclusively that men are more frequently benefited by a proper regard for the interests of others, than by the exclusive pursuit of their own advantage.

It is true that the decisions made in the two courts below are but little calculated to encourage that view of the ultimate result of affairs; but when a theory is once established it has no need of daily confirmation; and we take it that the decrees below may well be affirmed without any serious damage to the maxim above quoted. But simultaneously with these reflec-

tions must have come the resolve never to credit Haines & Co. any more. The situation, already so much shifted by unforeseen circumstances, was becoming too complex, and nothing better could be done than to set the seal and close the record. Haines & Co. received no further credit from Toof, Phillips & Co.; and their account was ended. The assignment of the title bond of Hough to Mahan was made January 18, 1868, and Hough made his deed to Mahan on the 5th February, 1868. On the 22d day of the same month, Mahan wrote to Haines & Co. Although the letter began with the endearing address, "Dear Boys," reminding the recipients of the days before the deeds were made, it hardly fulfilled the implied assumpsit of its beginning, and plainly foreshadowed that solution of the continuity of friendship which had become inevitable. He says, "I *would* carry out my agreement faithfully." Already the mood has passed from the indicative to the subjunctive. There seems to be something mysterious about the transaction after all. He says, with what view we know not, "I will execute to you the bonds as agreed, but there is only one way for it to be done. I will have to be in Augusta when it is done; I can't do it here. Don't worry yourselves about my not doing all I have agreed. Do just as I told you and all will be well." What had he told them, and what had they to fear, except the application of the law as here invoked?

Prior to this, however, about the 15th of February, Toof, Phillips & Co. on a rumor that Haines & Co. had shipped some cotton to Galena, Ill., attached other cotton of their's in New Orleans. This they released on the promise of Haines that thereafter every bale of their cotton should be shipped to the appellants at Memphis. Really, considering that Haines & Co. owed over $40,000 of other debts which they were under equal obligations to pay, the appellants were becoming insatiable.

As for the undivided half of the real estate conveyed by the bankrupts on the 18th day of January, 1868, for $1,876.84, in payment of that much of their debt, the case is so plain as to need no argument.

We refer with respect and confidence to the learned and conclusive opinion of the district judge copied in the transcript. The points of law involved herein are to our mind neither numerous nor difficult. This is the very case the bankrupt law was made for. Take the answer of the appellants: "At the time of making the transfers, defendants do not believe said Haines & Co. were able to pay their debts in money; but they were able to do so on a fair market valuation of the property they owned, and of their assets generally, and they were then able to do so. * * * * The conveyances were

made because Haines & Co., not having the money to pay the debts of these defendants, were willing to give them this property conveyed to them, and to sell to Mahan that sold to him."

If Haines & Co. could only pay their debts by conveyance of property, it would be desirable that the property should be equally applied to that end. If the first creditor who came along might take such as suited him, he would probably take too much; as was done in this; undeniably so since the appellants were not willing to surrender, and submit to an equal division, share and share alike. This is what the law was made to prevent, and what it condemns. It would be a mere waste of time to argue the question whether Haines & Co. were insolvent when the conveyances were made. Counsel for the appellants argue at great length that the word insolvency must have a different meaning attached to it in Arkansas from what it would receive elsewhere; and yet we are not aware, nor does the record show, that commercial habits in that State are anywise anomalous. It may have been said that insolvency is a question of fact; and that is true; but the meaning of the word, the construction of the act, are questions of law. If the law were to have a different interpretation for every hamlet, it would hardly be a "uniform system." The article of an anonymous writer in the American Law Review, cited by counsel (hardly an authority in this court, one would think,) condemns the principle for which appellants contend. That writer says: "Insolvency is used in two senses. In the first it denotes absolute inability to pay one's debts; in the second, inability to pay them as they become due in the ordinary course of business. The last is said when a banker, merchant, or trader is said to be insolvent." Haines & Co. were merchants.

All the evidence shows that they were utterly insolvent, and indulgence, which appellants denied, could not have relieved them. At the time appellants secured the preference they had suspended payment of their commercial paper for two or three months; their property had been levied on, and their assets, whatever their nominal value may have been, could not be made to pay the debts. That is proved outside of the schedules, which were not objected to, and which are referred to by the witness Haines as correct. (P. 69.) The cases cited disprove the doctrine they are called to support. Thus, in *Randall v. Sunderland*, 3 *B. R.*, 4, 5, the court said: "The term insolvency imports a present inability to pay. The probable or improbable future condition of the party in this respect does not affect the question." The case of *Drummond*, 1 *Id.*, 11, is cited, but decides the reverse of what is stated in the brief of counsel for appellants. In the case of *Cowles*, *Id.*, 42, 43, the court merely refer to *Curtis v. Leavitt*, as cited by counsel, to show

that it had no application. If in *Black v. Secor*, 1 *Id.*, 82, the court held insolvency to mean an inability to pay as debts become due and payable, whereby the debtor will be broken up, certainly Haines & Co. fulfilled all these conditions. In *Tucker v. Opelousas R. R.*, 3 *Id.*, 31, there was nothing decided except that the mere fact that the bonds of the company were selling at less than par value in the market, was not sufficient evidence of insolvency. Whether the bonds were due or not does not appear. In *Graham v. Starke*, *Id.*, 93, the court said: "It is entirely certain that Mrs. Martin was then wholly unable to meet her engagements and pay her debts in the ordinary course of business as persons in trade usually do, and she was therefore insolvent within the meaning of the bankrupt act." In *Doane v. Compton*, 2 *Id.*, 182, the court said: "If the debtor being insolvent, and knowing his situation, and expecting to stop payment, shall then make a payment, or give a security to a creditor for a just debt, with a view to give him a preference over the general creditors, such payment or giving security is fraudulent as against the creditors, and property that is transferred in making such payment, or giving the security, may be recovered by the assignee." There it is said that mere insolvency is no ground for bankruptcy, but as any payment of a debt, or suffering his property to be taken on legal process by the insolvent, is an act of bankruptcy, he must necessarily soon commit an act of bankruptcy. In *Hardy v. Binninger*, 4 *Id.*, 77, the court adopt the definition given in *Thompson v. Thompson*, 4 *Cush.* 134: "By the term insolvency as used in these statutes we do not understand an absolute inability to pay one's debts at some future time before the settlement and winding up of a trader's concerns; but a trader may be said to be in insolvent circumstances when he is not in a condition to pay his debts in the ordinary course, as persons carrying on trade usually do." In *Potter v. Coggeshall*, *Id.*, 19, the court said: "It is true that there were then outstanding claims against him, which he had not the money on hand wherewith to pay; but on the other hand it does not appear *that any of these were then due* under the arrangements and understanding between him and his creditors." Besides the defendant had ample assets to pay his debts whenever they should become due.

These are the cases which are cited to prove that Haines & Co. were solvent when the preferences were given, and there is not one of them that does not prove destructive of the theory advanced. "Look at it," counsel say; and then give an instance of a person, whose place of residence might be regarded as a non-essential, worth $50,000, owing on a bill of exchange $10,000, which is presented in a crisis of some kind, and cannot be paid for the want of ready money; and they ask whether

such a man is insolvent. The question may be one of interest; but as this imaginary case is the antipodes of that which we are now considering, we shall defer its discussion until some analagous case shall arise, or some hour of abundant leisure. Counsel unfortunately fall into the error of citing *Jones v. Howland*, 8 *Metc.*, 377; but that case was overruled by *Holbrook v. Jackson*, 7 *Cush.*, 136, or held not to apply to Sec. 89, of the Massachusetts insolvent act, of which Sec. 35 of the present bankrupt law is a substantial copy. See also *Hall v. Wager*, 3 *Chicago Legal News*, 401.

We think that it will hardly be denied that a merchant is insolvent either when he cannot pay his debts in the order in which they fall due, or when his debts exceed his assets. Haines & Co. were in both of these catagories. But a merchant is certainly considered insolvent in the former case, whether there be an absolute inability to pay his debts at a future time on winding up his affairs, or not, if he is not in a condition to pay his debts in the ordinary course of business as persons carrying on trade usually do. See many cases cited in note to Sec. 35 in *Bump on Bankruptcy*. Counsel are in error in saying that *Rison v. Heddins*, is not reported; See 4 *B. R*, 114; See also *Strahan v. Gregory, Id.*, 142; *Hall v. Wager, ubi sup.*

Counsel assert that it must be shown not only that Haines & Co. were insolvent, but also that they knew that fact. Certainly they did know that fact, for Chetlain told Mahan that they could not pay out. (P. 28.) But such knowledge is not essential; the fraud is constructive and not actual. *Haughey v. Albin*, 2 *B. R.*, 129; *Graham v. Starke*, 3 *Id.*, 93; *Scammon v. Cole, Id.*, 100; *Farrin v. Crawford*, 2 *Id*, 181; *Hall v. Wager, ubi sup.*; *Martin v. Toof*, 4 *Id.*, 158. In the case of *Morgan v. Mastick*, 2 *B. R.*, 163; the judge was misled by the same case of *Jones v. Howland*, 8 *Metc.*, 377, which he "read in full to the jury," not knowing that it had been overruled, as applying to the present law, as above stated. In law every one is supposed to intend the natural consequences of his own act. *In re Dibblee*, 2 *B. R.*, 187.

Counsel say that the bankrupt act "does not presume fraud, or sanction a conclusion establishing it, save by proof irresistible and conclusive." This is an error; for if the transfer be "not made in the usual and ordinary course of the business of the debtor, the fact shall be *prima facie* evidence of fraud." *Bankrupt act, Sec.* 35. In this case there is no evidence to impair the presumption of law thus arising; but everything to confirm it.

It is plain that if these transfers could have been upheld, none could ever be overthrown, unless the parties should state in their conveyances that they were made in fraud of the law;

which generally they would not do. Preferences made an hour before bankruptcy in favor of a grasping and persistent creditor, with every external evidence of their character as such, would be sustained, and the courts would become the allies of private parties in hindering, delaying and defeating the bankrupt law. The policy of the law is widely different. "The policy and aim of bankrupt laws are to compel an equal distribution of the assets of the bankrupt among all his creditors. Hence, when a merchant or trader, by any of these tests of insolvency, has shown his inability to meet his engagements, one creditor cannot, by collusion with him, or by a race of diligence, obtain a preference to the injury of others. Such conduct is considered a fraud on the act, whose aim is to divide the assets equally, and, therefore equitably." *Shawhan v. Wherritt*, 7 *How.*, 644. These doctrines are much more applicable to the act of 1867 than to the act of 1841. *In re Black & Secor*, 1 *B. R.*, 81.

Respectfully submitted,

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